

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHNATHAN L. BURKS,

Plaintiff,

vs.

Case No. 2:19-cv-10027

Hon. Gershwin A. Drain

BENNY NAPOLEAN, ET AL.,

Magistrate Judge Anthony Patti

Defendants.

_____ /

The Expert Deposition of CHIEF JAMES DAVIS,

Taken at 4747 Woodward Avenue,

Detroit, Michigan,

Commencing at 9:12 a.m.,

Friday, September 24, 2021,

Before Laura T. Ambro, CSR-5882.

Chief James Davis
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<p>1 APPEARANCES:</p> <p>2</p> <p>3 SARAH S. PRESCOTT</p> <p>4 Porter & Porter, PLLC</p> <p>5 105 East Main Street</p> <p>6 Northville, Michigan 48167</p> <p>7 248.679.8711</p> <p>8 prescott@sppplaw.com</p> <p>9 Appear on behalf of the Plaintiff.</p> <p>10</p> <p>11 PAUL T. O'NEILL</p> <p>12 Assistant Corporation Counsel</p> <p>13 500 Griswold</p> <p>14 30th Floor</p> <p>15 Detroit, Michigan 48226</p> <p>16 313.967.6402</p> <p>17 poneill@waynecounty.com</p> <p>18 Appear on behalf of the Defendants.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 Detroit, Michigan</p> <p>2 Friday, September 24, 2021</p> <p>3 9:12 a.m.</p> <p>4</p> <p>5 CHIEF JAMES DAVIS,</p> <p>6 was thereupon called as a witness herein, and after</p> <p>7 having first been duly sworn to testify to the truth,</p> <p>8 the whole truth and nothing but the truth, was examined</p> <p>9 and testified as follows:</p> <p>10 EXAMINATION</p> <p>11 BY MS. PRESCOTT:</p> <p>12 Q. Hello, Mr. Davis. It's nice to meet you in person.</p> <p>13 And thank you for your time here today. So, just as</p> <p>14 before, we are in person. So, it's maybe a little</p> <p>15 easier, I hope. I'm going to ask you questions.</p> <p>16 You're going to tell me what you know. Whatever your</p> <p>17 answers are. We have to try not to talk over each</p> <p>18 other because Laura has to do her best to get exactly</p> <p>19 what the words are. And when two people are speaking,</p> <p>20 it makes it harder than the regular job. It's really</p> <p>21 important that we also communicate clearly. So, there</p> <p>22 might be times where you nod or you shrug your</p> <p>23 shoulders. I might know what you mean, but I might ask</p> <p>24 you to just say a yes or no for the record. And that's</p> <p>25 why I do that. So, again, the record is really clear.</p>	
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<p>1 TABLE OF CONTENTS</p> <p>2</p> <p>3 WITNESS PAGE</p> <p>4 CAPTAIN REID CHAKRABARTY</p> <p>5</p> <p>6 EXAMINATION</p> <p>7 BY MS. PRESCOTT: 4</p> <p>8</p> <p>9 EXHIBITS</p> <p>10</p> <p>11 EXHIBIT PAGE</p> <p>12 Exhibits attached to transcript.</p> <p>13</p> <p>14 DEPOSITION EXHIBIT 1 8</p> <p>15 DEPOSITION EXHIBIT 2 15</p> <p>16 DEPOSITION EXHIBIT 3 36</p> <p>17 DEPOSITION EXHIBIT 4 114</p> <p>18 DEPOSITION EXHIBIT 5 116</p> <p>19 DEPOSITION EXHIBIT 6 120</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 It's also really important, in that vein of</p> <p>2 communicating, that you let me know if you don't</p> <p>3 understand anything. If you're not sure what I'm</p> <p>4 asking, please let me know. Or if you need me to</p> <p>5 clarify or define a term, okay?</p> <p>6 A. Yes.</p> <p>7 Q. All right. So, you are here today in what capacities</p> <p>8 for the sheriff's office, as you understand it?</p> <p>9 A. As I understand it, I believe I'm here in the capacity</p> <p>10 of PREA director.</p> <p>11 Q. And one of the things that we sent to counsel is a</p> <p>12 request for you to bring along documents that relate to</p> <p>13 your return to the county. So, I would ask you just</p> <p>14 some background questions. As I understand it, you had</p> <p>15 a career with the sheriff's office and it ended with a</p> <p>16 retirement in 2014; is that right?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And then was the next thing that you did for the</p> <p>19 county a consulting position in the form of James Davis</p> <p>20 Consulting, LLC?</p> <p>21 A. No.</p> <p>22 Q. Okay. So, what was between those two, between your</p> <p>23 retirement and when you entered a consultancy under the</p> <p>24 LLC?</p> <p>25 A. I came back in a part-time capacity, I believe, some</p>	

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<p>1 time in 2015.</p> <p>2 Q. Okay. And did you have a title or a particular role</p> <p>3 that was assigned in that part-time capacity?</p> <p>4 A. The reason for my return, as indicated by the sheriff's</p> <p>5 office, was to assist in police discipline and internal</p> <p>6 affairs investigations.</p> <p>7 Q. And what was your understanding about why there would</p> <p>8 be somebody that would be doing that part time as</p> <p>9 opposed to the regular staffing being able to cover</p> <p>10 those areas fully?</p> <p>11 A. My understanding was I was brought in to augment the</p> <p>12 existing deputy chief over discipline and internal</p> <p>13 affairs and work in her stead while she attended the</p> <p>14 FBI academy.</p> <p>15 Q. Okay. Did you, in fact – was that, in fact, what you</p> <p>16 did? In other words, did you, in fact, assist with</p> <p>17 police discipline and IA during that part-time</p> <p>18 consultancy?</p> <p>19 A. Yes.</p> <p>20 Q. Were there other duties or responsibilities during that</p> <p>21 part-time period before you formed the LLC and entered</p> <p>22 an agreement with the LLC?</p> <p>23 A. Yes. Because of my experience in the agency, I also</p> <p>24 assisted with policy. I assisted in litigation. I</p> <p>25 assisted in labor arbitration and general duties.</p>	<p>1 Q. And did you bring the contract here with you today?</p> <p>2 A. What you have today is what could be supplied by the</p> <p>3 administration director from her records.</p> <p>4 Q. Okay.</p> <p>5 A. And she sent those I think just yesterday or the day</p> <p>6 before.</p> <p>7 Q. Okay. So, why don't we mark this first packet. I</p> <p>8 don't want to write on it, since it's the only one.</p> <p>9 But it consists of resolution 2017-590. Modifications,</p> <p>10 number 2 between the county of Wayne and James Davis</p> <p>11 Consulting, LLC, which looks like a two-page document.</p> <p>12 And appendix B to that document. Modifications number</p> <p>13 3 between the county of Wayne and James Davis</p> <p>14 Consulting, LLC. And that was executed, it looks like,</p> <p>15 3/6/18. There might be two copies of that. But I'll</p> <p>16 hand them to the witness. So, there's apparently two</p> <p>17 copies of the modifications number 3. But we'll ask</p> <p>18 the witness if they're different.</p> <p>19 So, that's the resolution of one page;</p> <p>20 modifications 2, two pages; the appendix is one page;</p> <p>21 modifications number 3 is two pages; and there might be</p> <p>22 a duplicate of two pages. So, we're going to mark this</p> <p>23 as Exhibit 1.</p> <p>24 MARKED FOR IDENTIFICATION:</p> <p>25 DEPOSITION EXHIBIT 1</p>
Page 7	Page 9
<p>1 Q. Okay. And are there any other areas of assistance that</p> <p>2 you worked in that you can recall right now during this</p> <p>3 part-time period?</p> <p>4 A. No.</p> <p>5 Q. And are there particular areas of policy that you</p> <p>6 worked in during that part-time period?</p> <p>7 A. I generally assisted the current, the undersheriff of</p> <p>8 that time frame and helped him with whatever policies</p> <p>9 he was working on, which I didn't know would be many</p> <p>10 different types.</p> <p>11 Q. Who was the undersheriff at the time?</p> <p>12 A. Daniel Phannas.</p> <p>13 Q. P-h-a-n-n-a-s?</p> <p>14 A. Yes.</p> <p>15 Q. And do you know how long you filled this part-time role</p> <p>16 in which you were assisting in these ways you've just</p> <p>17 described?</p> <p>18 A. As you may know, the county of Wayne allows retired</p> <p>19 workers to work in a part-time capacity up to 1,000</p> <p>20 hours. I would have reached the hour maximum, I can't</p> <p>21 recall if it's the end of '15 or the beginning of '16.</p> <p>22 And then I returned in the full-time capacity.</p> <p>23 Q. Okay. And did you create an LLC in which to do that</p> <p>24 and enter under a contract?</p> <p>25 A. Yes.</p>	<p>1 9:20 a.m.</p> <p>2 BY MS. PRESCOTT:</p> <p>3 Q. My question is is Exhibit 1 the item that you were</p> <p>4 referring to that had been supplied by administration</p> <p>5 in the last day or so relative to your agreements with</p> <p>6 the county?</p> <p>7 A. Yes.</p> <p>8 Q. And what it looks like is you first entered into an</p> <p>9 agreement with the county under the format of the LLC</p> <p>10 in November of 2015. It says the parties entered into</p> <p>11 a contract for the term of November 1st, 2015 through</p> <p>12 September 30th, 2016. Have I read that correctly on</p> <p>13 the first page? So, that's the first page of</p> <p>14 modifications number 2. Do you think that November</p> <p>15 1st, 2015 was the time when you became full time?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And is it the case that you do not have the</p> <p>18 original copy that we're seeing a modifications number</p> <p>19 2 of?</p> <p>20 A. I believe that the county has it. And the supervisor</p> <p>21 is out due to Covid until the beginning of October.</p> <p>22 And I think at that point we could find the complete</p> <p>23 contract.</p> <p>24 Q. Okay. You don't have a copy of the original?</p> <p>25 A. I may. I would have to – I would need more time to</p>

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<p>1 look for a copy.</p> <p>2 Q. Okay. And so, was the county increasing your pay in</p> <p>3 these different modifications?</p> <p>4 A. My recollection is not an increase. It's each year</p> <p>5 we're building on the previous year. The compensation</p> <p>6 did not increase.</p> <p>7 Q. Are you working under the same original contract, just</p> <p>8 with labor modifications, all the way up to now?</p> <p>9 A. No.</p> <p>10 Q. Is there a time that you ended the contracts reflected</p> <p>11 in Exhibit 1?</p> <p>12 A. I believe in '18.</p> <p>13 Q. And then what happened with regard to your employment</p> <p>14 or consultancy or whatever arrangements you had with</p> <p>15 the county?</p> <p>16 A. I continued from then until now as a part-time</p> <p>17 1,000-hour employee.</p> <p>18 Q. Okay. And because you worked under the thousand hours,</p> <p>19 you don't need to have a separate consultancy?</p> <p>20 A. Correct.</p> <p>21 Q. I see.</p> <p>22 A. Correct.</p> <p>23 Q. I see. Let me just give this a look. Do you recall</p> <p>24 the date – well, let me back up before we move off of</p> <p>25 this.</p>	Page 10	Page 12
<p>1 Do you know of any difference between the two</p> <p>2 versions of modifications number 3 that are the last</p> <p>3 four pages of the exhibit?</p> <p>4 A. It looks like our administrator sent a double.</p> <p>5 Q. Okay. All right. Fair enough. I didn't see any</p> <p>6 differences, but we can look at them minutely later.</p> <p>7 These contracts don't seem, or at least the</p> <p>8 Exhibit 1, I don't see a title for you. Do you know</p> <p>9 when you obtained the title of the capacity you are</p> <p>10 talking about being here today, the PREA director?</p> <p>11 A. My recollection is 2016.</p> <p>12 Q. Okay. Do you know when in that year?</p> <p>13 A. I don't remember exactly, but I think it would</p> <p>14 correspond with that first full-time contract. So,</p> <p>15 perhaps November of '15.</p> <p>16 Q. Okay. The other document that you've supplied here</p> <p>17 reads Wayne County Sheriff's Office departmental</p> <p>18 communications. It's a memo to all concerned from</p> <p>19 James Davis Consulting, LLC dated September 14th, 2016.</p> <p>20 And the subject line is 2016 summary of services and</p> <p>21 activities. And then that's – let's mark that – is</p> <p>22 this its own document? It was clipped with other ones.</p> <p>23 A. It goes with the attachments, except for the</p> <p>24 appointment. I was trying to find this for today, the</p> <p>25 appointment. I thought that would be something that</p>	Page 11	Page 13

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<p>1 would require opposite gender deputies, when they were 2 assigned to a unit in that capacity, that they announce 3 that the opposite sex is present and will be doing 4 rounds.</p> <p>5 Q. Okay. Do you work with jail command and advise jail 6 command on rules regarding the youthful inmate 7 population as well as inmates in general?</p> <p>8 A. Yes.</p> <p>9 Q. You worked in collaboration with Wayne State during 10 that same year?</p> <p>11 A. Yes.</p> <p>12 Q. And I think you previously have mentioned this. I 13 don't remember in your testimony, but when you work on 14 a policy, that's not you sitting in a room and I'm 15 going to write up a policy. You have to coordinate 16 with lots of different groups of people and go through 17 iterations, drafts? There is a whole process that goes 18 with those things, right?</p> <p>19 A. Yes.</p> <p>20 Q. And it takes quite a lot of time, doesn't it?</p> <p>21 A. Yes.</p> <p>22 Q. In your memo that you summarize what you've been doing, 23 could you, sitting here today, tell how much time you 24 spent on any one of the bullet points in your memo 25 versus any other time?</p>	Page 14	Page 16
<p>1 A. That would be very difficult.</p> <p>2 Q. You don't have – so us lawyers, we will write down, at 3 the end of the day, whatever, depose James Davis. You 4 didn't do that?</p> <p>5 A. I did not.</p> <p>6 Q. You didn't have to submit billing that accounted for 7 like today I accounted for this policy and today I met 8 with so and so on that program at Wayne State?</p> <p>9 A. That was not required.</p> <p>10 Q. Did you do it?</p> <p>11 A. No.</p> <p>12 Q. Are the items that you brought today that were attached 13 to your 2016 summary of services and activities 14 attachments that went with the memo originally?</p> <p>15 A. Yes.</p> <p>16 Q. And are they the only attachments that went with the 17 memo originally?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. One of the items you brought here today you 20 mentioned was something called appointment?</p> <p>21 A. Yes.</p> <p>22 MS. PRESCOTT: Let's mark that as 2.</p> <p>23 MARKED FOR IDENTIFICATION:</p> <p>24 DEPOSITION EXHIBIT 2</p> <p>25 9:33 a.m.</p>	Page 15	Page 17

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<p>1 employee for a police department.</p> <p>2 Q. Fair. So, you had your MCOLES. There is no question</p> <p>3 about it. And in '14 you go to retire. In order to</p> <p>4 return to the Wayne County Sheriff, because you had a</p> <p>5 full retirement and you were separated, you then needed</p> <p>6 to be re-appointed and sworn, correct?</p> <p>7 A. If you want to work in the capacity of police officer.</p> <p>8 The sheriff certainly can hire a civilian who is an</p> <p>9 unsworn police officer.</p> <p>10 Q. Okay. And that's what he did with you, right? You</p> <p>11 weren't technically a sworn officer in 2015 until</p> <p>12 Exhibit 2 happens in 2016, and then eventually he</p> <p>13 actually re-swears you as an officer; is that right?</p> <p>14 MR. O'NEILL: Excuse me. Objection as to the</p> <p>15 date of the document you're showing him, the witness.</p> <p>16 BY MS. PRESCOTT:</p> <p>17 Q. Okay. Am I right?</p> <p>18 A. Yes.</p> <p>19 Q. And so, was there any time before Exhibit 2 is issued</p> <p>20 that you, or somebody with a title or duties of the</p> <p>21 deputy sheriff – because this document appoints you</p> <p>22 deputy sheriff. So, was that applicable before this</p> <p>23 document, just not officially? Or how would you</p> <p>24 describe it?</p> <p>25 A. It is and was applicable. And this is a document I</p>	Page 18	Page 20
<p>1 could find that represented 2016.</p> <p>2 Q. Okay. So, you're saying before it was technically –</p> <p>3 that you were deputy sheriff under this document, you</p> <p>4 were operating as deputy sheriff?</p> <p>5 MR. O'NEILL: Objection, vague. I don't</p> <p>6 understand the question.</p> <p>7 BY MS. PRESCOTT:</p> <p>8 Q. Is that right?</p> <p>9 A. There may be a previous signed appointment from the</p> <p>10 part-time phase.</p> <p>11 Q. Fair. There might be. I get you. But all I'm asking</p> <p>12 is were you acting in a role called deputy sheriff</p> <p>13 before Exhibit 2?</p> <p>14 A. Yes.</p> <p>15 Q. That's all I wanted to understand.</p> <p>16 You had the pleasure and honor of</p> <p>17 representing the sheriff's office previously in this</p> <p>18 case. You were deposed. Since that day, right up</p> <p>19 until we sat down and I started asking you questions,</p> <p>20 what have you reviewed in terms of documents or</p> <p>21 materials having anything to do with this case?</p> <p>22 A. I reviewed my original deposition testimony. I</p> <p>23 reviewed two documents supplied by you as expert</p> <p>24 testimony.</p> <p>25 Q. Anything else?</p>	Page 19	Page 21

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<p>1 that they were conducting an investigation, who 2 specifically do you mean? 3 A. The practice would have been to talk to the captain or 4 e-mail the captain. We would be notified as an 5 executive group that there was an assault. 6 Q. Okay. Do you have a specific memory, sitting here, of 7 talking to or e-mailing a captain about the Solomon and 8 Burks allegations? 9 A. Not other than it was my practice. 10 Q. Do you remember who the captain was that was 11 responsible and in charge? 12 A. I imagine that would be Builivant. 13 Q. But that you don't know for positive? 14 A. I'm fairly certain he was in that role in 2016. 15 Q. And do you recall any communications that you and he 16 had, about the Solomon and Burks allegations, other 17 than that it would have been your practice to say are 18 you sure you are investigating? 19 A. We would have follow-up communication regarding the 20 unfolding of the case. That there wasn't going to be a 21 charge. That they were going to refer to the 22 prosecutor for charges. 23 Q. Do you remember, sitting here today, having that 24 particular conversation with anyone, Builivant or 25 anyone else?</p>	Page 22	Page 24
<p>1 A. I believe it's too long ago to have that clarity of 2 memory other than that was my practice. 3 Q. You haven't seen any documents that reflect an e-mail 4 exchange of the kind you've just described, have you? 5 A. No. 6 Q. Do you think that e-mails might exist? Or have you 7 looked? 8 A. I believe we searched for e-mails and we would have 9 turned those over. So, my guess is we would have 10 talked on that. 11 Q. Have you talked to – he is now Commander Builivant. 12 Have you talked to Builivant about the Solomon and 13 Burks matter since the lawsuit was filed at any time? 14 A. I don't think in any detail. I think I know he was 15 deposed. I don't know if we were deposed on the same 16 day. Not regarding the case. 17 Q. Do you know Mr. Chakrabarty's role in IA at the time of 18 the Solomon and Burks allegations? 19 A. I imagine he's working in the jail. But he did have a 20 short stint as IA captain. And he left, and I'm not 21 sure, sitting here today, what the dates are. But if 22 he wasn't the IA captain, he was certainly assigned in 23 the jail. 24 Q. So, do you know whether it was Builivant or Chakrabarty 25 that was responsible at the time of the IA</p>	Page 23	Page 25

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<p>1 Do you know of dialogue they had with regard to Burks 2 and Solomon? 3 A. I do not. 4 Q. Did you participate in any sort of review of the file 5 after the IA investigation was – the steps of the 6 investigation were complete with anyone in the chain of 7 command at the sheriff's office? 8 A. As I previously stated, I would have had a discussion 9 with the captain regarding its status, which would be 10 my practice. 11 Q. Anything beyond that? 12 A. We would have had our – we would have met regarding 13 quarterly report or annual report. We would discuss 14 the cases over the time frame of reporting time to 15 discuss them. 16 Q. Who are you talking about as we there, we would have 17 met? 18 A. The internal affairs captain and myself. 19 Q. Okay. When you talk about reporting, are you talking 20 about to the bureau of prisons? 21 A. Both reports – the report to the bureau of prisons and 22 the report for the three-months accounting of assaults 23 in jails. 24 Q. And who did the three months of accounting of the 25 assaults in jails go to?</p>	<p>1 whatever would be in the internal affairs file are the 2 things that you might have seen. If it wasn't in that 3 file, then you wouldn't have seen any intake or 4 classification documents? 5 A. Generally not. 6 Q. Have you ever reviewed the <i>Odyssey</i>, the history of 7 charges against Solomon? 8 A. I've seen the jail charge sheet, but not the <i>Odyssey</i> 9 sheets or any LEIN information. 10 Q. Have you ever reviewed his medical for any time before 11 the rape? 12 A. No. 13 Q. Have you ever spoken with – do you know who the named 14 defendants are in this case, the individual officers? 15 A. No. 16 Q. Have you talked to any individual officers who were 17 floor security staff on the night of the assault? 18 A. No. 19 Q. About the case? 20 A. No. 21 Q. Did you ever speak with any of the prosecutors or 22 police officers who were involved in the prosecution of 23 Solomon as to Burks? 24 A. Other than the captain, no. 25 Q. The captain wasn't – do you know who the police</p>	
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<p>1 A. No. It was happening at a lower command level.</p> <p>2 Q. When were you first appointed to do anything relative</p> <p>3 to training or studying, enforcing the Prison Rape</p> <p>4 Elimination Act?</p> <p>5 A. Is there a window you're asking me to comment on, or</p> <p>6 forever?</p> <p>7 Q. When was it your role to be somebody that was looking</p> <p>8 at the Prison Rape Elimination Act, how we need to</p> <p>9 behave under it, how we need to enforce it?</p> <p>10 A. In 2003, I was the training director of the agency as a</p> <p>11 lieutenant and we incorporated PREA into our then</p> <p>12 correctional academy.</p> <p>13 Q. Okay. When were you responsible for any other aspect</p> <p>14 of the training or enforcing any Prison Rape</p> <p>15 Elimination Act requirements? So, you were in the</p> <p>16 training unit in 2003. Was there a time where PREA</p> <p>17 enforcement was one of your job duties under your</p> <p>18 title?</p> <p>19 A. Other than 2016?</p> <p>20 Q. No, 2016.</p> <p>21 A. I was the PREA director in 2016.</p> <p>22 Q. Okay. So, 2016 you became the PREA director, right?</p> <p>23 A. Yes.</p> <p>24 Q. Any other –</p> <p>25 A. That's possible that that went into 2017 when I became</p>	<p>1 academies put in some format of training relative to</p> <p>2 the Prison Rape Elimination Act? Was it a requirement</p> <p>3 to do so?</p> <p>4 A. I don't think it was a requirement in 2003. And I</p> <p>5 can't speak for today, because I no longer have an</p> <p>6 administrative role with the Michigan Sheriff's</p> <p>7 Training and Coordinating Council.</p> <p>8 Q. So, can you speak to when it became a requirement for</p> <p>9 all of the correctional academies that are accepted by</p> <p>10 the Wayne County jail to be sufficient as hired?</p> <p>11 A. I can speak to ours. It's always been included since</p> <p>12 2003.</p> <p>13 Q. Right. But you can't speak to others?</p> <p>14 A. Not sitting here today without looking into it, asking</p> <p>15 the question.</p> <p>16 Q. Okay. And did you personally create the programming</p> <p>17 that went into the Wayne County Sheriff's Office</p> <p>18 correctional academy relative to the Prison Rape</p> <p>19 Elimination Act?</p> <p>20 A. Not the current modules developed.</p> <p>21 Q. But back in 2003, you said you were a lieutenant, and</p> <p>22 you said there was an effort to put some training into</p> <p>23 the correctional academy?</p> <p>24 A. Yes.</p> <p>25 Q. Did you lead that?</p>	
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<p>1 the grants director in '17 and '18. And then I became</p> <p>2 the PREA director again when I went back to my</p> <p>3 part-time role maybe in '19 until today.</p> <p>4 Q. The Wayne County sheriff's office runs a correctional</p> <p>5 academy?</p> <p>6 A. Yes.</p> <p>7 Q. And you knew and understood that officers – so, is</p> <p>8 that entity within the sheriff's department, or is it a</p> <p>9 separate like property or non-property agency?</p> <p>10 A. That's the training unit that you referred to earlier.</p> <p>11 The training unit runs the academy.</p> <p>12 Q. So, your point is in 2003, Wayne County knew and</p> <p>13 understood that it needed to have PREA training for its</p> <p>14 recruits that were going to the correctional academy,</p> <p>15 right?</p> <p>16 A. We voluntarily added it.</p> <p>17 Q. Because you felt that it was necessary?</p> <p>18 A. Because we saw it on the horizon as being important.</p> <p>19 Q. Okay. So, you don't have to go to the Wayne County</p> <p>20 sheriff's office correctional academy to become a</p> <p>21 correctional officer in the Wayne County jail, right?</p> <p>22 A. Correct. You just have to attend a certified academy</p> <p>23 in the state of Michigan by the Michigan Sheriff's</p> <p>24 Coordinating and Training Council.</p> <p>25 Q. And did the Coordinating Council all across its</p>	<p>1 A. Yes.</p> <p>2 Q. Okay. And so, was that same module that you developed,</p> <p>3 was there like a module or a written policy? Or what</p> <p>4 did you develop?</p> <p>5 A. I believe we expanded the prison supervision module to</p> <p>6 contain sexual safety.</p> <p>7 Q. Okay. And so, what does that mean? You did a</p> <p>8 PowerPoint, a written policy, or reenactments? What</p> <p>9 did you develop?</p> <p>10 A. There may have been a PowerPoint that we developed and</p> <p>11 awareness. What I'm recalling today sitting here is</p> <p>12 there was an awareness module regarding the Prison Rape</p> <p>13 Elimination Act.</p> <p>14 Q. Fair. Can you describe it any –</p> <p>15 A. Not any closer than the obvious factors of ensuring</p> <p>16 that officers are aware of the safety of the prisoners,</p> <p>17 sexual safety and rape.</p> <p>18 Q. I guess what is confusing to me, I assume, since the</p> <p>19 Wayne county jail has been in operation, officers have</p> <p>20 been trained that they are supposed to attend to the</p> <p>21 safety of prisoners?</p> <p>22 A. So, if I'm not being clear, of course you're correct.</p> <p>23 That's all we do. That's all we do is provide for the</p> <p>24 custodial care of prisoners in the jail setting. And</p> <p>25 officers are expert at that. And they were expert</p>	

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<p>1 before 2003. 2003 we made a point to emphasize sexual 2 safety. It was still a consideration prior. 3 Q. So, what I'm trying to understand is what changed in 4 2003; if you have any detail that you can give me? 5 A. What changed is Michigan Sheriff's Coordinating and 6 Training Council became a body in the state of 7 Michigan. And I was interested in being part of that 8 organization; and I was. We not only added Prison Rape 9 Elimination Act awareness, but we increased our academy 10 length and we participated in creating the entire 11 correctional module that the state uses. 12 Q. Okay. So, my question wasn't super clear. My question 13 is what specifically in the training modules changed in 14 2003 relative to awareness of prisoner safety, 15 including sexual safety; if you recall? 16 A. Well, what I recall from Wayne County in 2003 is we 17 were becoming aware of this federal legislation. We 18 wanted officers to be aware of federal rules. I'm 19 sorry. We wanted to be aware, officers to be aware. 20 Q. Okay. So, you wanted them to know there was this new 21 act and that it increased or had an emphasis or focused 22 on the risks of sexual violation in conditions of 23 confinement? 24 A. Yes. 25 Q. Was there any more content that you can tell us about </p>	Page 34	Page 36
<p>1 here today? 2 A. I cannot recall. I can say from my 1989 jailers 3 training that I attended personally, there was still 4 sexual safety discussed regarding prisoner housing 5 supervision. 6 Q. When was the first time you took a module that was 7 developed by the people who focused or have expertise 8 in sexual safety in prisons, whether it was PREA or any 9 other, you know, training module from beyond your 10 academy years? 11 A. When I became the PREA director, I was the first one to 12 take the NIC modules from the PREA center, and I took 13 them all. And after that, I directed the rest of the 14 jail staff to take modules that I thought were 15 appropriate to their role. 16 Q. Okay. So, is this 2016? 17 A. '16. 18 Q. And when did you complete the modules? 19 A. It might be in the exhibit. I'm not sure. But it 20 would have been pretty fairly early on. Perhaps 21 January. 22 Q. Are there records of that? 23 A. It might be in what we provided. 24 Q. Okay. So, I'll look through these. Is there any other 25 records? Then let's mark the rest of it. Let's mark </p>	Page 35	Page 37

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<p>1 Q. How long had Mr. Pappas been working on the policy 2 before you started? 3 A. I don't know. 4 Q. Do you know why he wasn't able to promulgate it and get 5 it out during his term as PREA director? 6 A. No. 7 Q. Do you know how many drafts were done under his 8 stewardship when he was in that role? 9 A. I do not. 10 Q. Do you know whether he had sexual assault response 11 meetings? 12 A. I do not. 13 Q. Did you ever attend any sexual assault response 14 meeting? 15 A. Yes. 16 Q. Did you ever do so before you were the PREA director? 17 A. No. 18 Q. When is the earliest you can recall attending one? 19 A. The reports from that meeting are in the packet that we 20 supplied today. I think it was 2016. 21 Q. Do you know whether there were any meetings being held 22 before that, like a sexual assault response team – 23 A. I do not know. 24 Q. –meeting? 25 A. I do not.</p>	Page 38	Page 40
<p>1 Q. Do you know whether Mr. Pappas attended any specialized 2 training for investigating sexual assaults? 3 A. I don't know. 4 Q. Did you order internal affairs to attend specialized 5 training for sexual assault investigations? 6 A. Yes. 7 Q. Do you know when? 8 A. The paperwork is in that handout. It was in that – in 9 2016 I ordered them to – well, I asked supervisors to 10 have them take the specialized investigator training 11 from the PREA website. And I also recall them saying 12 that they attended some kind of in-person PREA 13 investigator training. And that may have been before 14 me under Charles Pappas. 15 Q. Do you know who said that to you? 16 A. It most likely was Captain Bulivant. 17 Q. What did Captain Bulivant say that specifically – do 18 you remember any more than what you just said? 19 A. Just that there was an in-person training that some of 20 the investigators attended. And I don't have the 21 specific recollection of the exact wording. 22 Q. So, you asked a supervisor to have IA take the 23 specialized training in 2016. Did that then get 24 ordered? 25 A. Yes.</p>	Page 39	Page 41

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<p>1 question was asked of the victim about where any staff 2 was, what any staff was doing, whether he asked for 3 help, anything to do with what was going on with staff 4 whatsoever, you're not aware of that?</p> <p>5 A. I am not.</p> <p>6 Q. So, how did you just testify a moment ago that you're 7 able to sit here and assess the quality of the IA 8 investigation into this matter?</p> <p>9 A. My understanding of this case is that the inmate told 10 an officer that he had a problem. The officer acted 11 immediately. Removed him from the ward with – got 12 assistance, got medical assistance. Called internal 13 affairs. There was no indication that there was any 14 fault on the officer's response to a claim of assault.</p> <p>15 Q. How would there be any indication of fault on the part 16 of the people who were responsible, and as you just 17 testified 15 or 20 minutes ago, experts in paying 18 attention to people's safety if the victim wasn't even 19 asked a single question about what the experts on 20 safety were doing or where they were or how they 21 responded at the time of the rape?</p> <p>22 A. That would be a question for the investigator.</p> <p>23 Q. But I'm asking you. You said you could sit here and 24 testify about the quality of the investigation. And 25 then you said, you know, there's no indication of any</p>	Page 42	Page 44
<p>1 problem.</p> <p>2 A. I'm confident that if there was an indication of a 3 problem, it would have gone through discipline and I 4 would have seen it from the disciplinary chief and we 5 would have acted on that information. Because that's 6 what internal affairs does every time, hundreds of 7 times.</p> <p>8 Q. So, maybe there would have been all kinds of follow-up, 9 all kinds of discipline, and thinking about it, and 10 paying attention to it. Except my question to you is 11 how would you ever get there if no one bothered to even 12 ask a single question about what the staff was doing 13 that night? How would you know if you don't – you say 14 there is no indication. I agree there is no indication 15 because there is no investigation of it. So, how can 16 you say what would have happened if there is no 17 investigation?</p> <p>18 A. I think there was an investigation and I think they did 19 a good job. They were able to prosecute the person.</p> <p>20 Q. Okay. But I'm not asking about prosecuting assailants. 21 Your job as the PREA director is to prevent the rape, 22 right? I mean, it's great that you prosecuted 23 afterwards. Someone went to jail for that. But 24 someone was also raped, and your job is to prevent 25 that, right?</p>	Page 43	Page 45

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<p>1 experiences and all your seniority, with an IA 2 investigation that doesn't ask a single question? Are 3 you aware of other IA investigations that don't ask 4 even a single question about where the officers were at 5 the time?</p> <p>6 A. I'm not sure I agree that they didn't ask a single 7 question.</p> <p>8 Q. Because you don't know, do you? You don't really know 9 what they asked, right?</p> <p>10 A. I know they asked questions. You can't conduct an 11 investigation without asking questions.</p> <p>12 Q. Okay. But you, sitting here today, you don't know that 13 they never – well, you testified before you don't know 14 what was asked of the officers or whether they were 15 given written statements to do or questioned in any 16 way. You already said that. And you earlier said you 17 didn't listen to the tapes. You don't know what my 18 client was asked. Is it going to be your testimony, 19 leaving here today, that you can put your print on, you 20 know, quality job guys, on an investigation that you 21 don't know what the questions were?</p> <p>22 MR. O'NEILL: Well, excuse me. Objection, 23 exceeds the scope of this witness's testimony and 24 expected testimony at trial. Go ahead and answer, if 25 you can.</p>	Page 46	Page 48
<p>1 A. I believe today that they did a good investigation and 2 I think that did they ask a single question needs to be 3 asked to the internal affairs.</p> <p>4 BY MS. PRESCOTT:</p> <p>5 Q. I don't understand the basis for your opinion that it 6 was a good investigation.</p> <p>7 A. From the perspective of PREA, prisoners got all the 8 service that they needed that was necessary and 9 required and they did it in an expedient, quick manner.</p> <p>10 They protected both prisoners by separating them, 11 receiving medical care.</p> <p>12 Q. So, you think PREA is solely limited to getting medical 13 care, getting people separated, taking their statements 14 after the fact, and giving no attention whatsoever to 15 what the institutional or personnel failures might have 16 been or even just things that could be improved on?</p> <p>17 You think that's what PREA is about?</p> <p>18 MR. O'NEILL: Excuse me. Objection, 19 mischaracterizes prior testimony. You can answer, if 20 you can.</p> <p>21 A. I think I need you to ask a question.</p> <p>22 BY MS. PRESCOTT:</p> <p>23 Q. I'll rephrase it.</p> <p>24 Specific to the Solomon and Burks rape, what 25 analysis was conducted to determine if there was any</p>	Page 47	Page 49

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<p>1 review.</p> <p>2 Q. What did Builivant do specifically to assess whether</p> <p>3 any staff members might need to be retrained,</p> <p>4 disciplined, talked to, about their behaviors or</p> <p>5 failures or acts or omissions?</p> <p>6 A. He would act on anything that he found wrong or unusual</p> <p>7 or failing from the investigation.</p> <p>8 Q. Do you know specific steps Builivant took as to the</p> <p>9 Burks and Solomon investigation to determine staff</p> <p>10 appropriateness or inappropriateness of responses?</p> <p>11 A. I don't know.</p> <p>12 Q. Do you know anything the investigator did in that</p> <p>13 regard, not Builivant but the actual – Christopher</p> <p>14 Lawson, if that helps you?</p> <p>15 A. Not outside of the investigation itself.</p> <p>16 Q. How about Commander Cane, who is in charge of the floor</p> <p>17 security?</p> <p>18 A. I don't believe we had any interaction. Maybe we spoke</p> <p>19 about it, but I do not recall.</p> <p>20 Q. Do you know of any steps she took specific to the staff</p> <p>21 that were on duty on the night of the rape to</p> <p>22 investigate it for herself or to discipline or coach in</p> <p>23 any way as to their failures or acts or omissions?</p> <p>24 A. I would have to defer to her. I do not know.</p> <p>25 MR. O'NEILL: Can we take a break in the next</p>	Page 50	Page 52
<p>1 15 minutes or so?</p> <p>2 MS. PRESCOTT: Yeah.</p> <p>3 BY MS. PRESCOTT:</p> <p>4 Q. Why isn't there any documentation of you reviewing</p> <p>5 anything about the Solomon and Burks rape in your role</p> <p>6 as PREA coordinator?</p> <p>7 A. Well, it was my practice to create – review documents</p> <p>8 if I saw a need to review the case.</p> <p>9 Q. So, you didn't review all the cases?</p> <p>10 A. I reviewed all the cases, but I only would write a</p> <p>11 report on if I thought something was actionable.</p> <p>12 Q. So, the only thing we have that suggests that you, in</p> <p>13 any way – you don't have an e-mail. You don't have</p> <p>14 any writings from Builivant, Chakrabarty, your boss,</p> <p>15 Cane, or anybody else, nothing in writing about you</p> <p>16 ever having anything to do with reviewing the</p> <p>17 investigation of Solomon and Burks as PREA coordinator,</p> <p>18 right?</p> <p>19 A. Not outside of my three-month review and annual review.</p> <p>20 Q. You mean the numbers that reflect that there wasn't</p> <p>21 even an attack at all in 2016? Is that what you mean</p> <p>22 by the three-months review and the annual review? Is</p> <p>23 that what you're referring to?</p> <p>24 A. I'm referring to the time that we go over the cases for</p> <p>25 reporting is a chance to see any additional new</p>	Page 51	Page 53

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<p>1 case can be dismissed, even though they committed a 2 rape in the Wayne County jail; do you understand that? 3 A. I'm sorry. You would have to repeat that. 4 Q. Do you understand that the prosecutor could end up with 5 a dismissal of a case where there's absolutely a rape 6 that has occurred in the Wayne County jail even though 7 they can't get a conviction for it; do you understand 8 that? 9 A. Yes. 10 Q. And you understand that the jail and the sheriff's 11 office has its own responsibility to determine for 12 itself whether allegations are substantiated or not, 13 right? 14 A. Yes. 15 Q. And you can't delegate that to somebody else, correct? 16 A. Correct. And we would move it to substantiated, 17 whether it was prosecuted or not. Whether, based on 18 information from the captain, that he felt it was 19 substantiated. 20 Q. Why didn't that ever happen in 2016 or 2017 in your 21 reporting out that there is no substantiated cases? 22 Why didn't anybody ever make a finding and say we 23 substantiate that this happened in our facility? 24 A. Well, I believe, at the time, we were waiting for that 25 to resolve.</p>	Page 54	Page 56
<p>1 Q. So, you just decided to delegate it in this case and 2 not make your own determination? 3 A. No. I would ask them every three months was there 4 progress on that. Where would we put that now. 5 Q. Why didn't you say, for example, Burks passed a 6 polygraph. A prosecutor finds that there is a basis 7 for a warrant. A judge binds someone over. There are 8 findings that there is probable cause. Why didn't any 9 of those steps say, along with what we see and what we 10 observe, we think that's enough, we think that's 11 substantiated? 12 A. And we would do that. And we should have done that. 13 If we didn't do it, we would have done it. 14 Q. Wasn't it substantiated to the extent of your people 15 thinking this needs to go, and the prosecutor needs to 16 do this, the very day it went out to Kim Worthy's 17 office for a warrant? You don't send her office things 18 you don't think happened, do you? 19 A. Well, we send her things that we're looking for a 20 determination on from a criminal charge, for criminal 21 liability. 22 Q. There's no piece of paper anywhere that you've ever 23 seen where someone in your department says that the 24 sheriff's office says stamp substantiated, all the way 25 up to today, isn't that correct?</p>	Page 55	Page 57

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<p>1 A. Specifically, I guess I can't answer that.</p> <p>2 Q. How about any command staff over that jail division,</p> <p>3 same question. What specific steps they did, not what</p> <p>4 you did, in the say eight months before the rape?</p> <p>5 A. I can't recall any specifics.</p> <p>6 Q. Do you know whether the sheriff's office was compliant</p> <p>7 with PREA in August of 2016?</p> <p>8 A. I would say we were in a position of many jails that</p> <p>9 were working towards full compliance. We were</p> <p>10 complaint in many ways.</p> <p>11 Q. What were the ways that you weren't compliant in 2016?</p> <p>12 A. That we were not?</p> <p>13 Q. Right. That you were working toward.</p> <p>14 A. One of our challenges is the PREA standard of viewing</p> <p>15 inmates of the opposite gender. Because we don't have</p> <p>16 architecture that supports privacy screens for</p> <p>17 toileting and showering. And we talked about ways that</p> <p>18 we could change the building's architecture. But it</p> <p>19 seemed impossible that we're abandoning that jail. And</p> <p>20 we instead brought in rules like the knock and announce</p> <p>21 rule for opposite gender viewing.</p> <p>22 Q. Anything else in the 2016 area of not quite compliant,</p> <p>23 not quite there yet?</p> <p>24 A. Well, I think we were working on multiple standards at</p> <p>25 the same time to bring them into fruition, including a</p>	Page 58	Page 60
<p>1 zero tolerance standard, which I thought was one of the</p> <p>2 most important PREA standards. And because that</p> <p>3 involves a culture change, and that was something I had</p> <p>4 discussions with command and written communication to</p> <p>5 help create a – everything I did was focused on zero</p> <p>6 tolerance, meaning a culture change. Meaning this is</p> <p>7 something we think about every day, even in regular</p> <p>8 transactions, that don't appear to be something that</p> <p>9 would contribute to a sexually charged environment, but</p> <p>10 could, and we were working on that. I think we were</p> <p>11 working on all the standards.</p> <p>12 Q. What standard are you talking about that –</p> <p>13 A. To come up to the zero tolerance standard, that we need</p> <p>14 to create a culture that supports that. That means</p> <p>15 roll-call education. Everything that we're doing to</p> <p>16 work towards that goal.</p> <p>17 Q. Is that still a work in progress?</p> <p>18 A. I think we are doing very well in that regard.</p> <p>19 Q. Any other areas of not being in compliance in August of</p> <p>20 2016?</p> <p>21 A. I can't recall at this moment.</p> <p>22 Q. Okay. So, the PREA standards, you're familiar with</p> <p>23 them?</p> <p>24 A. Yes.</p> <p>25 Q. When was the last time you reviewed them?</p>	Page 59	Page 61

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<p>1 Q. My question is what, in the year 2016, set you apart 2 from others like Commander Cane or others like 3 Ms. Bell, one of the defendants in this case, who have 4 many, many, many years of taking care of prisoners in 5 conditions of confinement, specifically to the PREA 6 Act, and what it was bringing as a whole – your words, 7 a whole culture change. So, what did you have in 2016 8 – what did you have that spoke to the qualifications 9 to bring around a cultural change?</p> <p>10 A. Because I had the executive skills to do that. I was 11 sergeant and commander and deputy chief. I inserted 12 myself in every aspect of our agency. And I did it 13 under four political administrations. There's no doubt 14 I would be qualified to do this. And you might know, 15 or you might not know, that agencies around the 16 country, there is a – the sergeant is the PREA 17 director or there is the lieutenant.</p> <p>18 Q. Yes.</p> <p>19 A. So, I'm qualified.</p> <p>20 Q. Let's ask it this way: Did you have any education 21 specific to sexual trauma, sexual victimization, sexual 22 defiance, PREA, any formal education in those subjects?</p> <p>23 A. Perhaps in my Bachelors program and psychology courses.</p> <p>24 Q. Perhaps or you did?</p> <p>25 A. I would think yes that I did.</p>	<p>1 finish.</p> <p>2 BY MS. PRESCOTT:</p> <p>3 Q. Did you have more to your last answer?</p> <p>4 A. Just the fact that what we do every day is in the 5 interest of sexual safety, of suicide prevention, of 6 assault and batteries. Those are behaviors that we see 7 every day and react to every day.</p> <p>8 Q. You didn't remember what the question had been. The 9 question had been isn't it true that you had to take 10 all this training in January of 2016 because you did 11 not have prior training on the PREA standards, what 12 each standard was, how it was going to be enforced, how 13 it needed to be operationalized, what other departments 14 in the country were doing, all those kinds of things, 15 you didn't have that prior to 2016; am I correct?</p> <p>16 A. What was the first part of that question?</p> <p>17 Q. Am I correct that at some point in 2016, you had not 18 had training and education to specialize in whatever 19 the different PREA standards were, how they were 20 operationalized, what other departments were doing 21 elsewhere, what they required, and so on?</p> <p>22 A. My experience and my self study of that is what I have, 23 and then training courses.</p> <p>24 Q. The 2016 training course, right?</p> <p>25 A. Correct.</p>	
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<p>1 of PREA in 2012 and '13 when it came to employee 2 training? 3 A. And in 2016. 4 Q. I'm back to your point. You said in 2012 and 2013 5 you're a leader in this department. And a leader of 6 all of the experts. You're pulling out the Act and 7 reading it and self studying it. So, I'm in 2012 and 8 2013 now. And my question is why the department, if 9 people like you are there self studying it, why doesn't 10 the department roll out training on PREA. And you 11 answered well, they got it at the academy. And I said 12 well then why do they have it now? Why do the PREA 13 training now after the academy, if you can just rely on 14 the first day before you were a sworn officer? That's 15 the question. 16 A. It's a long-term process to meet and exceed all the 17 standards. And that's certainly our goal. If I'm 18 recalling 2012 and '13, we're talking about standards 19 like the youthful offender standard where we were 20 struggling to create wards to house 17 year olds to 21 comply with the Act. So, there are many pieces of the 22 Act that we're working on as command in those years. 23 And we were able to correct the staffing plan to allow 24 for the formation of the youthful detainer ward. So, 25 there were other considerations going on.</p>	Page 66	Page 68
<p>1 Q. At what point did anyone say we need to determine which 2 employees have not received training on the PREA 3 standards because they haven't gone to an academy that 4 required it, or because they went to our academy before 5 the year 2003? When did that discussion happen? 6 A. There's two parts to that. There isn't anyone working 7 that hasn't had exposure to the PREA requirement and 8 the jailers training in the state of Michigan. Because 9 my recollection is it is part of the MSTC official 10 academy. And I know that we have a module in ours. 11 So, that may be one part. So, everyone is going to 12 have training on PREA. As you say initially – 13 Q. Okay. But if you follow my point, if I go to the 14 academy in the year 2002, I don't have any exposure to 15 the concept of the Prison Rape Elimination Act; do you 16 agree with that? 17 A. Well, if the Prison Rape Elimination Act didn't exist 18 in 2003 or didn't exist in 2002 – 19 Q. Right, it didn't. 20 A. So, what they have would be sexual safety training, 21 just a viewpoint from a professional correctional 22 officer, that this is something that we pay attention 23 to, that is risk of suicide, risk of assault and 24 batteries, risk of sexual predation is a risk that is 25 always trained.</p>	Page 67	Page 69

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<p>1 sexual harassment promulgated with that kind of work 2 and that kind of cultural construct before 2002 at the 3 Wayne County jail? 4 A. I don't know if there was 1417 prior to the 2009 that's 5 a revision. I'm not sure. 6 Q. You're aware that PREA said that current employees who 7 have not received PREA training had to have it within 8 one year of the effective year of the PREA standards, 9 correct? 10 A. Correct. 11 Q. And you're also aware that the agency was required to 12 provide refresher training to all employees, even when 13 they had had something back at the academy, every two 14 years, right? 15 A. Yes. 16 Q. So, was there an audit done of who got what, and who 17 needs what, where is everybody in their two years, did 18 they get it at what academy? Are you aware of any kind 19 of audit of that nature? 20 A. I was not in the training center in those years. I'm 21 not aware of any actions that would have been taken 22 regarding that. 23 Q. And, in fact, when you come in in 2016, and you say 24 everybody please order that there be this PREA 25 training, it's because of this standard saying that</p>		<p>1 conflict with the federal rule. And in Michigan, a 17 2 year old cannot be housed in an adult jail. It 3 violates PREA. 4 Q. So, a state judge enforced state law and ordered that 5 youth 17 and under be removed, right? 6 A. I think so. 7 Q. And so, that happened in 2013. And clearly by then, 8 the department knew this PREA, these PREA rules, we're 9 supposed to be following and enforcing them, right? 10 A. Yes. 11 Q. Was there a memo or any kind of writing by anybody to 12 say you guys, we're supposed to be training, we're 13 supposed to have these refreshers for every single 14 staff member for PREA? It came in effect in 2012. 15 We're not doing that. Was there any memo that talks 16 about hey, here's what we're not compliant with, you 17 guys; any time ever that you've seen? 18 A. I don't recall from 2012. 19 Q. How about '13, '14, '15, '16? 20 A. I don't recall prior to mine. 21 Q. Well, you didn't write a memo saying here's what we're 22 not compliant with? 23 A. Regarding training? 24 Q. Or anything. Any of the standards, did you? 25 A. Well, there's several memos in there that are dealing</p>
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<p>1 people needed to get refresher training on a regular, 2 at least two-year basis, right? 3 A. Correct. 4 Q. So, why did anybody issue that order in 2012 or 2013 5 when, as you say, people were sitting around in the 6 command offices self studying this thing? 7 A. I think I said we were acting on other portions of the 8 Act in order to attempt to come into compliance. 9 Q. Isn't it true – isn't it that even the Act that had 10 been passed, one of the things that happened is that a 11 Wayne County judge said you had to move all the youth 12 and they couldn't be kept with the adults in 2013; do 13 you remember that? 14 A. I don't remember. I don't remember the specific order. 15 I know we created a youthful ward. 16 Q. So, you don't recall that you just didn't create it, 17 that it had to be litigated over and a judge ordered 18 it? 19 MR. O'NEILL: Objection, foundation. Go 20 ahead and again answer, if you can. 21 BY MS. PRESCOTT: 22 Q. I'll ask it again. You're not aware that a judge had 23 to order that the department take the kids out of the 24 adult areas because of PREA in 2013? 25 A. I recall that happening regarding state laws, a</p>		<p>1 directly with standards that need improvement. 2 Q. Okay. You understood that the policy also needed to be 3 revised and that's why you were working on it, right, 4 because of PREA, right? 5 A. We chose to update the 2009 version to incorporate more 6 of the PREA rules, yes. 7 Q. And so, what, whether it's the training, whether it's 8 the policy – let's go to auditing. PREA requires 9 audits for sexual safety. That's a standard that is 10 part of the law since 2012 at least; are you familiar 11 with that? 12 A. Yes. 13 Q. There's never been an audit, right? 14 A. We plan on having an audit in the new facility. 15 Q. But there hasn't been one yet? 16 A. There hasn't been one at the current jail. 17 Q. So, in that respect, and maybe others, but at least in 18 that respect, still no compliance with PREA right up to 19 2021, right? 20 A. With respect to audits, yes. 21 Q. And I guess I can – can you help me understand the 22 thinking. This jail is so old and the facility is 23 literally – cannot comply with PREA, like cross-gender 24 viewing. Therefore, we're not going to audit what 25 might be dangerous in this facility. I don't</p>

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<p>1 understand the thinking of putting off the audit to 2 move away from where, you know, you have PREA problems. 3 A. Well, we want to comply and want to work towards 4 complying, and our goal is to do that. And I think we 5 made significant progress. I don't think we felt like 6 that this would help us, because it would negate – the 7 new facility would need to have a hundred percent 8 compliance audit. And trying to bring 1926 into a 21st 9 century state-of-the art detention facility, you know, 10 there would never be – I don't know how we could pass 11 that audit. 12 Q. When you say 1926, you're talking about the date that 13 the Wayne County jail was open? 14 A. Yeah. Well, not open, but that particular building. 15 Q. That particular building. And so, your point is there 16 wasn't a way to pass the audit in the building that you 17 were in? 18 A. There may have been a way, but the resources might not 19 have been – it might not have made sense to do that. 20 I mean, it didn't comply in any way. And interesting, 21 we do comply with the cross-gender viewing in that 22 building, but we don't have privacy screens there. 23 Q. Okay. So, any other reason that audits haven't been 24 conducted to this point? 25 A. Just that we're working towards that. That's our goal.</p>	Page 74	<p>1 with sprinkler systems. We have spent a lot of money 2 trying to make that jail safer and more comfortable for 3 the inmates just within the last 20 years. 4 Q. That's because the inmates took the sheriff and the 5 county to court and said the conditions of confinement 6 here are, I think the word was barbaric, and the court 7 ordered a whole slew of improvements to be made. When 8 the sheriff was in public saying we can't even invest 9 in this building when we're going to be moving. Does 10 that history sound familiar? 11 A. Well, we weren't moving. The case is from 1971. And 12 we were building a new facility for 1984. 13 Q. Right. And the sheriff publicly said that the office 14 had stopped doing anything improvement wise in the jail 15 because they expected to move. Do you recall that? 16 MR. O'NEILL: Objection, foundation. 17 A. Yeah, I can't recall that. 18 BY MS. PRESCOTT: 19 Q. You don't recall that? 20 A. No. 21 Q. You don't recall that the sheriff had to go down and 22 there was a whole court case in 2013 and '14 and fight 23 over the fact that there wasn't even money and they 24 couldn't keep investing? You don't remember that? 25 A. I was not there in '14. I don't recall that.</p>	Page 76
<p>1 And many other sheriff's offices are also working 2 towards that goal. 3 Q. Okay. You've never worked at any other sheriff's 4 office, correct? 5 A. Correct. 6 Q. You've never been detailed to another sheriff's office 7 or whatnot, have you? 8 A. No. 9 Q. Are you aware of the classification systems that are 10 used and were used in 2016 to screen for risk of 11 potential victimization and potential aggressors 12 pursuant to PREA in other facilities around the region? 13 A. No. I'm not in the technology group. So, the 14 awareness may be with our technology group. That is 15 their responsibility for a new computer system in the 16 new jail. I'm sure they're aware of it. 17 Q. Isn't it true that the department has made calculated 18 decisions over the years to forego investments in 19 safety and security and upgrades at the 1926 jail, as 20 you put it, because the hope and expectation was that 21 prisoners wouldn't be housed there much longer? 22 A. No, I don't think that's true. I think we went through 23 extensive renovations and changes and spent millions 24 and millions of dollars adding and making it safer for 25 prison inmates with lighting, with air-conditioning,</p>	Page 75	<p>1 Q. But just to finish up this section, you never went back 2 to a list of standards and said let's take out the list 3 and let's line up where we're meeting and where we're 4 not meeting and put that in writing, right? You never 5 did that? 6 A. That's what we did all in 2016. 7 Q. Where is it? I'm asking did you put down on paper 8 here's what we're missing and here's where we're 9 complying? 10 A. Not like that. 11 Q. Okay. 12 A. I think there is a record of the standards that we 13 worked on in 2016. 14 Q. And so, you can't testify, even sitting here today, 15 that the jail – what items it was in compliance on and 16 what it wasn't in compliance with in 2016, can you? 17 A. My understanding is we were most in compliance with the 18 Act in 2016, moving towards compliance. 19 Q. Now, you said that everybody gets training on PREA and 20 everybody has had it. You don't know the date that 21 everybody got their statutory or their 22 federally-required PREA training completed in the jail 23 that you asked for it to happen, right? 24 A. Other than it was done in that year. 25 Q. For example, the lady who put Solomon down in the</p>	Page 77

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<p>1 classification that apparently allowed him to be with 2 my client, she got the training on the day my client 3 was raped, according to a little certificate. You 4 would agree with me that that doesn't help someone for 5 someone to get PREA training after they've already gone 6 through the steps that lead to these two people being 7 housed together?</p> <p>8 A. How would she magically know about that.</p> <p>9 Q. Are you aware whether the classification staff had any 10 PREA training, any kind of sexual assault – some of 11 them aren't officers. They didn't go to the academy. 12 Are you aware of that?</p> <p>13 A. So, if they didn't attend, they were required to take 14 this in-service training regardless. They might have 15 attended a civilian jailers training. We used to do 16 that. I'm not aware what they were doing with civilian 17 training.</p> <p>18 Q. They may have. But the records we got show they 19 didn't, after processing Burks and Solomon through, and 20 they didn't go to the academy. Were you aware that 21 that was the state of training and education in the 22 office in 2016 like so? In 2016, were you aware of 23 that?</p> <p>24 A. Well, I'm aware that even civilians get training before 25 they start. And we always had an avenue to train them</p>	<p>1 computers.</p> <p>2 Q. Fair enough. Listen, I understand you came into this 3 in January. I understand that. My point is the PREA 4 standards came in in 2012. PREA was enacted in 2003. 5 And in none of that time, all of those prisoners that 6 went through, the hundreds of thousands of people that 7 were processed through those years, are going through 8 with classification people who, according to our 9 records, aren't getting any kind of training, some of 10 the civilians especially, and did you know that?</p> <p>11 A. No. Because, like I said, we train civilians. So, I 12 don't look at them as being different or exempt from 13 training.</p> <p>14 Q. What training did the woman who had classified Solomon 15 have on the day that she classified him; do you know 16 that?</p> <p>17 A. No.</p> <p>18 Q. Do you know that she is basically an admin clerk?</p> <p>19 A. I do not know that.</p> <p>20 Q. Do you recall that it used to be that sworn officers 21 did interviews with inmates and did like a worksheet 22 with them as part of the old way things used to be done 23 when they were classified?</p> <p>24 A. I'm aware that it's changed over time. That that was a 25 way in the past.</p>	
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<p>1 Q. Command staff above you never said please do this, 2 right? 3 A. No, that I recall. 4 Q. Some basics on the policy piece. Is it your 5 understanding that written policies are meant to be 6 picked up by anybody in the department who can read it 7 and understand it and implement it, this is what we do, 8 that's what the written policies are for? 9 A. Yes. 10 Q. Do you think that someone who picks up the policies 11 about operations knows how the department really works 12 when they read the policies? Or do you think that the 13 policies are just sort of guidelines that aren't really 14 reflecting actual practice? 15 A. I think the policies do reflect practice. And I don't 16 think it's realistic to assume that we would just sit 17 someone down and say here's 500 pages, now go do those 18 things. It doesn't happen like that. 19 Q. I'm saying if someone like me, if I read the policies, 20 am I seeing what is really happening? Is there like a 21 de facto set of actual practices that aren't what the 22 policies show? 23 A. I don't think there is a de facto set of policies. I 24 think the policies work in a totality where, you know, 25 over time and distance all these policies they don't –</p>	Page 82	Page 84
<p>1 they're not – I don't believe they can work and just 2 read this one. I mean, they just all work together and 3 they all come from a different intention, let's say, 4 right. So, there's – but it doesn't mean that other 5 things don't affect what's happening in that policy. 6 So, it's a complex environment. 7 Q. So – are you finished? I don't want to cut you off. 8 A. No, go ahead. 9 Q. I'm not sure I understand. You said there is not a de 10 facto set of the way we really do it, policies. And 11 then you just told me there is a complicated system and 12 everything affects it. Are you saying there is a de 13 facto set of different practices? 14 A. No. I'm saying there are other policies that help you 15 understand the individual policy. If you have a 16 question, most likely there is another policy that's 17 answering that question. Because it is – they can be 18 very specific. 19 Q. And part of the reasoning you have policies is so that 20 the enforcement of expectations can be fair to the 21 staff and to the prisoners, right? 22 A. Enforcement of rules. 23 Q. So what you're enforcing, it's actually you already 24 knew this, you have the policies. So that when you 25 have to enforce your rules, it's fair they knew about</p>	Page 83	Page 85

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<p>1 mean, I wasn't part of that. So, I don't have any 2 direct knowledge of it. But I do believe that they 3 correctly classified people. They're very good at it. 4 I have no reason to believe that they wouldn't properly 5 classify anyone.</p> <p>6 Q. But you don't have any specific knowledge particular to 7 Solomon or Burks in that regard, right?</p> <p>8 A. No.</p> <p>9 Q. Same question with regard to the screening process with 10 regard to either of them. You don't know anything 11 specific about Solomon and Burks and the screening 12 intakes?</p> <p>13 A. No.</p> <p>14 Q. We talked about management of offenders or prisoners in 15 the last deposition. Just to be clear on our 16 terminology, when I say management of a prisoner, I 17 mean like how they're moved. You know, where they 18 might be housed. What programming they might receive. 19 Is that your understanding?</p> <p>20 A. I understand what you're saying. I don't recall the 21 testimony.</p> <p>22 Q. Does that understanding of management line up with the 23 way you use the word management? When I say how is 24 that prisoner managed, do you understand that to be in 25 reference to how they were housed, what programming</p>	<p>1 A. Yes. 610 was a protection ward. And you would be 2 moved there if you had some sort of concern. Either 3 the inmate or the housing officer would detect that 4 would be a place to eliminate the general population 5 interacting.</p> <p>6 Q. Is protective custody supposed to be a place where the 7 custody is more protective than general population?</p> <p>8 A. In the sense that you don't want to interact with 9 another specific person or a specific group or you just 10 might feel safer with less people around you. I mean, 11 I think there's a wide range of reasoning for 12 separating someone from the general population.</p> <p>13 Q. Yes, I agree. But, for example, there could be two 14 different types of people. There could be Hannibal 15 Lecter, who is going to eat anybody that he is housed 16 with, and very extremely scary and can't be trusted, or 17 an elderly grandfather who is 104 and can barely move. 18 Can both of those people be put into protective custody 19 in the same thing, in the same little interacting unit?</p> <p>20 A. I think the answer is it depends. I mean, I'm trying 21 to think through your scenario. And it would be 22 unlikely someone who could barely move would be – 23 might be in the medical ward for care and custody. 24 Someone who, you know, eats other people, I think they 25 would be housed in a more restrictive environment like</p>	
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<p>1 they went to, where they were moved in the facility?</p> <p>2 A. I think of that term as housing.</p> <p>3 Q. Okay. Do you understand that in August of 2016, the 4 Wayne County sheriff's office knew that my client, 5 Mr. Burks, was at a serious risk of attack from other 6 prisoners within his walls?</p> <p>7 A. I don't know. I don't have knowledge of that.</p> <p>8 Q. Do you know whether the Wayne County sheriff's office 9 knew that he was a particularly vulnerable prisoner in 10 August of 2016?</p> <p>11 A. I don't have any knowledge of that.</p> <p>12 Q. Do you know if anyone knew that he had never been in 13 prison before or jail before?</p> <p>14 A. I don't know.</p> <p>15 Q. You don't know. Did the Wayne County sheriff's office 16 take action relative to Burks and his vulnerable status 17 because he presented a harm to himself in particular?</p> <p>18 A. Based on him being housed in the protection unit, I 19 think they specifically drew the conclusion that they 20 put him there as a solution to what they viewed as a 21 risk.</p> <p>22 Q. Okay. But do you know whether that's why he was there?</p> <p>23 A. No.</p> <p>24 Q. Okay. And so, what is the special unit you're 25 referring to, protective custody?</p>	<p>1 maximum.</p> <p>2 Q. What if they have just been convicted of mutilating 3 dead bodies and raping young children, they don't go to 4 maximum security, do they?</p> <p>5 A. So, then you moved on to how do you determine those 6 conditions. And that's a different question.</p> <p>7 Q. Okay. But let's go to this one. People who are 8 charged with mutilating dead bodies and raping children 9 and rape and mayhem. And then people that have been 10 convicted of, you know, bad check writing. They've 11 never been convicted of eating people and mutilating 12 dead bodies. They don't go to maximum security at the 13 Wayne County jail; you're aware of that?</p> <p>14 A. I think the answer is it depends on – it depends on 15 what they're presented with.</p> <p>16 Q. So, they can, but they don't necessarily go to maximum 17 security is your point?</p> <p>18 A. Well, I think that's true for every prisoner that's 19 classified. I think they make decisions on what they 20 see.</p> <p>21 Q. If they see, in the classification ward, that Solomon 22 had been arrested for mutilating a dead body, sexually 23 offending 13 to 15 year olds, why didn't they override 24 anything and put him in maximum security?</p> <p>25 A. I don't have any knowledge of what they saw or didn't</p>	

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<p>1 see or how to classify that.</p> <p>2 Q. So, going back to policy then, are you aware that in</p> <p>3 the year 2016, protective custody was being used as a</p> <p>4 place to put people who were difficult to manage due to</p> <p>5 institutional misconduct, difficulty with others,</p> <p>6 prisoner rock bossing, and so on, at the same time, in</p> <p>7 the same ward, putting people who were vulnerable to</p> <p>8 attack? They're mixing those two groups in the same</p> <p>9 ward; did you know that in 2016?</p> <p>10 A. I would say, again, that it would depend on the facts</p> <p>11 presented. There are many reasons you might not want</p> <p>12 to be in general population.</p> <p>13 Q. I'm saying that are you aware that that pattern was</p> <p>14 occurring in 2016?</p> <p>15 A. I'm not aware of that as a pattern, no.</p> <p>16 Q. Are you aware of that ever occurring?</p> <p>17 A. I'm not aware of them dangerously putting people</p> <p>18 together, no.</p> <p>19 Q. So, you understand that it would be dangerous to put a</p> <p>20 vulnerable person in with somebody who was difficult to</p> <p>21 manage, having problems with others, rock bossing,</p> <p>22 manipulating others, raping people, violating and</p> <p>23 raping bunkies, and so on; you would not put those two</p> <p>24 together, would you?</p> <p>25 A. I think it's an impossible sort of question if we don't</p>	<p>1 housing options that we have. There is single cell.</p> <p>2 There is isolation. There's more housing available for</p> <p>3 someone who is so vulnerable. I just can't agree that</p> <p>4 it's A or B.</p> <p>5 Q. You can't agree that it's something that should be done</p> <p>6 or shouldn't be done?</p> <p>7 A. Well, no one is going to advocate for harming people</p> <p>8 through housing. I mean, no one is going to say that.</p> <p>9 Q. I understand. I'm talking about what is smart to do in</p> <p>10 order to keep people peaceful, happy, safe prisoners.</p> <p>11 A. Yeah, they do that every day.</p> <p>12 Q. People that aren't raped. And I'm asking you, in my</p> <p>13 scenario, do you think that those two prisoner groups</p> <p>14 that I just described, or profiles I just described,</p> <p>15 are people that are properly housed together? Do you</p> <p>16 need me to repeat it?</p> <p>17 A. Yeah. If you want me to answer a hypothetical, I need</p> <p>18 to understand the parameters.</p> <p>19 Q. You're here today to be an expert, right; you</p> <p>20 understand that?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And you're here today citing your expertise and</p> <p>23 all of the years of experience. So, that's why I'm</p> <p>24 asking the hypothetical. A particular person who the</p> <p>25 Wayne County jail has identified as being vulnerable to</p>	
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<p>1 have the facts of what they knew.</p> <p>2 Q. I didn't ask what anyone knew. I'm saying you, with</p> <p>3 your PREA lens over this stuff, you wouldn't think</p> <p>4 those two should go together; that I just described,</p> <p>5 would you?</p> <p>6 A. Again, I'd have to understand what are you – the</p> <p>7 variables are so numerous. You'd have to look at the</p> <p>8 two cases individually. Individually, through any</p> <p>9 lens, including a PREA lens, and make that</p> <p>10 determination. Is there a time when it doesn't work</p> <p>11 out and we have to move them, perhaps. If that's what</p> <p>12 you're asking. But the idea that we would, you know,</p> <p>13 make mistakes, you know, I think we're very good at not</p> <p>14 making mistakes, considering the amount of variables</p> <p>15 and what they're presented with every day.</p> <p>16 Q. Okay. So, let's stipulate that you imagine there could</p> <p>17 be lots of variabilities. My question is do you, with</p> <p>18 your PREA lens, think it's appropriate to put together,</p> <p>19 into the same ward, a person who is understood to be an</p> <p>20 especially vulnerable person and a person who is</p> <p>21 understood to be especially dangerous and difficult to</p> <p>22 deal with, as demonstrated by interactions with other</p> <p>23 prisoners, as demonstrated by their record? Do you</p> <p>24 think that those two should be placed together?</p> <p>25 A. I don't see how it's possible, considering all the</p>	<p>1 be attacked by other prisoners, should that profile of</p> <p>2 a person be housed with the profile of a person that</p> <p>3 has been repeatedly charged with rape, mutilating dead</p> <p>4 bodies, raping children, difficult to manage in the</p> <p>5 facility, breaking rules, rock bossing people, a</p> <p>6 pattern of institutional misconduct?</p> <p>7 A. I would answer – again, I would answer it depends. I</p> <p>8 mean, you could have all these cases but they might</p> <p>9 have been dismissed, or never charged. Are they</p> <p>10 convictions. Are they – I mean, are they convicted of</p> <p>11 the crimes. I mean, I think your second scenario is</p> <p>12 too broad.</p> <p>13 Q. Okay. Well, let's just take a normal 65-year-old that</p> <p>14 can get up and down but they're never been in jail</p> <p>15 before. They don't have any, you know, history.</p> <p>16 They're not a hardened criminal. And somebody who is</p> <p>17 accused and brought in for mutilating dead people. He</p> <p>18 hasn't been convicted though, but he's been arrested</p> <p>19 for just a pattern of dozens of rapes and mutilating</p> <p>20 dead bodies. Should those two people be together?</p> <p>21 MR. O'NEILL: Objection, we're getting so far</p> <p>22 afield on relevance.</p> <p>23 BY MS. PRESCOTT:</p> <p>24 Q. Go ahead.</p> <p>25 MR. O'NEILL: You can answer if you can.</p>	
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<p>1 have the facts of what they knew.</p> <p>2 Q. I didn't ask what anyone knew. I'm saying you, with</p> <p>3 your PREA lens over this stuff, you wouldn't think</p> <p>4 those two should go together; that I just described,</p> <p>5 would you?</p> <p>6 A. Again, I'd have to understand what are you – the</p> <p>7 variables are so numerous. You'd have to look at the</p> <p>8 two cases individually. Individually, through any</p> <p>9 lens, including a PREA lens, and make that</p> <p>10 determination. Is there a time when it doesn't work</p> <p>11 out and we have to move them, perhaps. If that's what</p> <p>12 you're asking. But the idea that we would, you know,</p> <p>13 make mistakes, you know, I think we're very good at not</p> <p>14 making mistakes, considering the amount of variables</p> <p>15 and what they're presented with every day.</p> <p>16 Q. Okay. So, let's stipulate that you imagine there could</p> <p>17 be lots of variabilities. My question is do you, with</p> <p>18 your PREA lens, think it's appropriate to put together,</p> <p>19 into the same ward, a person who is understood to be an</p> <p>20 especially vulnerable person and a person who is</p> <p>21 understood to be especially dangerous and difficult to</p> <p>22 deal with, as demonstrated by interactions with other</p> <p>23 prisoners, as demonstrated by their record? Do you</p> <p>24 think that those two should be placed together?</p> <p>25 A. I don't see how it's possible, considering all the</p>	<p>1 be attacked by other prisoners, should that profile of</p> <p>2 a person be housed with the profile of a person that</p> <p>3 has been repeatedly charged with rape, mutilating dead</p> <p>4 bodies, raping children, difficult to manage in the</p> <p>5 facility, breaking rules, rock bossing people, a</p> <p>6 pattern of institutional misconduct?</p> <p>7 A. I would answer – again, I would answer it depends. I</p> <p>8 mean, you could have all these cases but they might</p> <p>9 have been dismissed, or never charged. Are they</p> <p>10 convictions. Are they – I mean, are they convicted of</p> <p>11 the crimes. I mean, I think your second scenario is</p> <p>12 too broad.</p> <p>13 Q. Okay. Well, let's just take a normal 65-year-old that</p> <p>14 can get up and down but they're never been in jail</p> <p>15 before. They don't have any, you know, history.</p> <p>16 They're not a hardened criminal. And somebody who is</p> <p>17 accused and brought in for mutilating dead people. He</p> <p>18 hasn't been convicted though, but he's been arrested</p> <p>19 for just a pattern of dozens of rapes and mutilating</p> <p>20 dead bodies. Should those two people be together?</p> <p>21 MR. O'NEILL: Objection, we're getting so far</p> <p>22 afield on relevance.</p> <p>23 BY MS. PRESCOTT:</p> <p>24 Q. Go ahead.</p> <p>25 MR. O'NEILL: You can answer if you can.</p>	

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<p>1 A. You know, I think I answered this already. If you're 2 going to have these extreme scenarios, the answer is 3 going to be no. But I think it's gray. It's not black 4 and white.</p> <p>5 BY MS. PRESCOTT:</p> <p>6 Q. Why is the second scenario any different just because 7 – I mean, do you look at charges when putting people 8 together?</p> <p>9 A. For them it's real life. It's in the scenario.</p> <p>10 Q. Trust me. I'm on this side of the table standing next 11 to the person that's been raped. So, I got that. My 12 question for you is does the person who is extremely 13 scary because of their charges, does that ever come 14 into it?</p> <p>15 A. Yes.</p> <p>16 Q. Does this department ever look at that?</p> <p>17 A. Of course they do.</p> <p>18 Q. Okay. So, why was Solomon a person who had been 19 charged over and over and over again with raping 20 people, who had been convicted of raping people, who 21 had been found to rape bunkies in the facility, why was 22 he housed with my client?</p> <p>23 MR. O'NEILL: Objection, mischaracterizes the 24 record. You know, Ms. Prescott –</p> <p>25 MS. PRESCOTT: You don't need to verbally –</p>	<p>Page 94</p> <p>1 inmates have problems, they get moved. And the fact 2 that they had a reason to put them there. And that the 3 housing officer would say hey, this officer is having, 4 or this inmate is having problems on this floor, or 5 with the general population, what can we do. And 6 sometimes, somehow – I mean, that's so – I think it's 7 clear that there was some efforts made to protect both 8 of those prisoners.</p> <p>9 Q. Isn't it true that the individual floor security staff 10 have no ability whatsoever to remove a prisoner from a 11 dangerous situation that they are witnessing on a 12 floor? They can't do that?</p> <p>13 A. That's wrong. They can do that.</p> <p>14 Q. They don't have the authority or ability to do that, do 15 they?</p> <p>16 A. They do.</p> <p>17 Q. That's just on paper though. That's not practically 18 happening.</p> <p>19 A. I think you're wrong there. Because every move that 20 happens starts with the housing officer's observation. 21 Everything, of course, they do, they need guidance so 22 they don't put people in the wrong place. Yes, they 23 do. But it all starts with them, if they see people 24 who are sad, and might be at risk of suicide. What 25 they see in their daily job, that all gets condensed.</p>	
<p>1 MR. O'NEILL: I'm just saying you're 2 misleading the – you're purposely contradicting the 3 record in this case.</p> <p>4 MS. PRESCOTT: No, I'm not.</p> <p>5 BY MS. PRESCOTT:</p> <p>6 Q. Why was someone with Solomon's profile housed with 7 someone with my client's profile?</p> <p>8 MR. O'NEILL: Objection, outside of the area 9 of this witness's expertise.</p> <p>10 A. And my previous answer was I don't know how he was 11 classified. I don't have those facts.</p> <p>12 BY MS. PRESCOTT:</p> <p>13 Q. How, if you don't know how he was classified, and what 14 the facts were, and how this could possibly be, or 15 whether it makes sense, are you here to say that you 16 think that it was done in accordance with the law?</p> <p>17 A. I think I'm going to say that I was not involved in his 18 classification and I don't know how they came to that 19 conclusion. And I think I already agreed to your crazy 20 example where they're so far apart that it would be 21 obvious. But I'm not prepared to say that it was 22 obvious with this Solomon.</p> <p>23 Q. And you don't know who made any assessment or whether 24 they took the appropriate steps, do you?</p> <p>25 A. Well, I know what the practice is. That those – if</p>	<p>Page 95</p> <p>1 And if they feel that a housing change is necessary, 2 classification gets involved and they make that change.</p> <p>3 Q. But they can't remove someone on their own?</p> <p>4 A. Absolutely they can, and they're required to.</p> <p>5 Q. And they do it?</p> <p>6 A. Of course they do.</p> <p>7 MS. PRESCOTT: Do you want to take a break?</p> <p>8 MR. O'NEILL: I don't need one.</p> <p>9 MS. PRESCOTT: I just want maybe five 10 minutes.</p> <p>11 MR. O'NEILL: Sure.</p> <p>12 (Recess taken at 12:02 p.m.)</p> <p>13 (Back on the record at 12:18 p.m.)</p> <p>14 BY MS. PRESCOTT:</p> <p>15 Q. Do you know Keith Williams at all, one of the 16 defendants in this case? He's not with the department 17 any longer.</p> <p>18 A. I do not know that name.</p> <p>19 Q. Do you know, even sitting here today, what rounds he 20 did with the Solomon and Burks ward on the night of the 21 rape?</p> <p>22 A. Didn't we look at –</p> <p>23 Q. We talked about the policy, yeah. We had a discussion 24 about rounds.</p> <p>25 A. And my impression was they were done. But perhaps 610</p>	<p>Page 97</p>

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<p>1 was inoperable, the card reader for 610. That's what I 2 recall.</p> <p>3 Q. Okay. So, do you know – are you going to testify at 4 trial – do you know whether rounds were done that 5 night in ward 610?</p> <p>6 A. I would have to review those records to answer that. 7 And I think you showed me some. But at this point, I 8 can't recall. So, what I can say is rounds were done. 9 And I think we had a discussion of how it would be 10 difficult to do a round without seeing into 610, is I 11 think what I said.</p> <p>12 Q. But you don't have personal knowledge whether you were 13 a part of supervising the rounds? Or you know what the 14 records are. We all have the records. But you don't 15 have any personal knowledge?</p> <p>16 A. No, I don't.</p> <p>17 Q. And you don't have any knowledge of any discussion with 18 Williams and Mr. Burks on the day of the rape?</p> <p>19 A. No.</p> <p>20 Q. And do you have any prior knowledge of what Solomon was 21 like at the – you know, like in various periods of 22 being in the jail of his – what his institutional 23 regard was?</p> <p>24 A. I do not. And I don't recall him as a prisoner in any 25 way.</p>	<p>1 is 60 minutes. And that officers are to do them 2 intermittently or so, and unpredictable patterns. And 3 it takes time to walk from one side of the jail to the 4 other. And depending on where you start is where you 5 finish. But the rule is that you do that within the 6 60-minute time frame but still staggering your exit and 7 entering times.</p> <p>8 Q. Okay. Is that written somewhere?</p> <p>9 A. Yes. It's in the rounds policy.</p> <p>10 Q. So, you think the rounds policy said you can do more 11 than 60 minutes if you're staggering, what you just 12 described?</p> <p>13 A. No.</p> <p>14 Q. Do you know how many shifts Mr. Williams had worked?</p> <p>15 How many doubles or –</p> <p>16 A. No, I do not.</p> <p>17 Q. Do you know if Burks asked him for help with Solomon?</p> <p>18 He expressed fear of Solomon?</p> <p>19 A. I do not know.</p> <p>20 Q. When someone expresses fear of an inmate and says they 21 need help with them, the staff is supposed to 22 investigate that and take steps to deal with it, right?</p> <p>23 A. Yes.</p> <p>24 Q. Do you know whether Mr. Williams heard or saw anything 25 unusual that night?</p>
<p>1 Q. Do you know whether Mr. Williams had any experience 2 with sexual assaultive inmates at the time of the rape 3 of Mr. Burks?</p> <p>4 A. So, I'm not clear on experience, what you mean.</p> <p>5 Q. Like had he been an officer who had managed sexual 6 assaultive inmates? And to what extent could you 7 testify to any of that?</p> <p>8 A. I could not, no.</p> <p>9 Q. Do you know what Mr. Williams particular duties were on 10 the night of the rape?</p> <p>11 A. I don't.</p> <p>12 Q. Do you know whether that night he was operating 13 according to standards and expectations for his 14 supervision of the prisoners?</p> <p>15 A. My assumption would be yes. Do I know, no.</p> <p>16 Q. Do you know of any reason why the rounds would not be 17 conducted every 30 minutes in protective custody that 18 night?</p> <p>19 A. I do not have knowledge of that.</p> <p>20 Q. Or why they weren't conducted every 60 minutes that 21 night?</p> <p>22 A. I wouldn't have knowledge of that.</p> <p>23 Q. Do you understand that every either 30 or 60 minutes 24 they were supposed to be conducted, right?</p> <p>25 A. Well, my understanding of rounds is that the standard</p>	<p>1 A. I do not.</p> <p>2 Q. Do you know whether he was derelict in any duty that 3 night?</p> <p>4 A. I do not.</p> <p>5 Q. With regard to Ms. Bell, do you know – again, we have 6 the records on the rounds. But do you have any 7 information personally about the rounds she did that 8 night?</p> <p>9 A. I do not.</p> <p>10 Q. Or discussions she had with Mr. Solomon?</p> <p>11 A. I do not know.</p> <p>12 Q. Do you know if she had any prior knowledge of 13 Mr. Solomon's history of institutional misconduct?</p> <p>14 A. No.</p> <p>15 Q. Do you know if Williams had that information in August 16 of 2016?</p> <p>17 A. I don't know.</p> <p>18 Q. Do you know whether Ms. Bell had prior experience 19 managing sexually assaultive inmates?</p> <p>20 A. No.</p> <p>21 Q. Do you know what her duties were – she was with 22 Williams that night. Do you have any information what 23 her different roles and duties were that night?</p> <p>24 A. I don't know how they were scheduled.</p> <p>25 Q. Do you know how many shifts she had worked that week?</p>

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<p>1 A. I do not.</p> <p>2 Q. Do you know whether Burks asked her for help with</p> <p>3 Mr. Solomon, or this person that was coming to be</p> <p>4 housed with him?</p> <p>5 A. I do not know.</p> <p>6 Q. Do you know whether she was derelict in any duty that</p> <p>7 night?</p> <p>8 A. No.</p> <p>9 Q. Do you know whether the cameras were working on ward</p> <p>10 610 on the night of the rape?</p> <p>11 A. I do not know.</p> <p>12 Q. Isn't it true that you and the other policy makers and</p> <p>13 management at the Wayne County jail didn't consider it</p> <p>14 something that was your responsibility or your job, to</p> <p>15 look into whether there were any failures by jail staff</p> <p>16 that could have contributed to sexual assaults from</p> <p>17 2003 to 2016?</p> <p>18 A. I do consider that within my job description and rely</p> <p>19 on internal affairs in large part to show me where</p> <p>20 violations are in investigations.</p> <p>21 Q. Is IA supposed to tell anyone else?</p> <p>22 A. It's a closed unit. They keep those investigations</p> <p>23 confidential. There is a supervisor, the captain who</p> <p>24 would communicate with the disciplinary deputy chief,</p> <p>25 who I communicate with. And that's the practice. They</p>	Page 102	Page 104
<p>1 let us know if there's a violation that comes up with</p> <p>2 an investigation, like failure to do rounds.</p> <p>3 Q. Are there policies that tell IA what they're supposed</p> <p>4 to investigate? Specifically that they are supposed to</p> <p>5 be looking at whether staff may have contributed to an</p> <p>6 unsafe sexual assault situation, or the institutional</p> <p>7 failure, like we have a blind spot over here? Is there</p> <p>8 some policy that says IA should be specifically looking</p> <p>9 for those things?</p> <p>10 A. I can't think of a policy. But I know that they</p> <p>11 believe their duty is to report on what they find. And</p> <p>12 in my experience, they're looking for rule violations</p> <p>13 that I would interpret, under a PREA lens, as something</p> <p>14 that perhaps could be done differently. They wouldn't</p> <p>15 be necessarily looking to the PREA lens, but they would</p> <p>16 be looking for factual deficiencies.</p> <p>17 Q. Was it anybody else's job to look at the IA</p> <p>18 investigations under that particular lens that okay,</p> <p>19 whether or not it's a rule violation, it's a risk and</p> <p>20 we need to be managing this risk because of PREA?</p> <p>21 A. No. I think the commander could be involved. But</p> <p>22 internal affairs has their own line of authority.</p> <p>23 Q. And you don't see that as problematic, that IA doesn't</p> <p>24 circle back with the command staff and say look, this</p> <p>25 is what we found, whether it's exonerating the staff in</p>	Page 103	Page 105

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<p>1 Q. So, I know we just did this exercise, logical exercise</p> <p>2 a moment ago, but the fact that people are getting</p> <p>3 disciplined may be an indication that that's how many</p> <p>4 disciplines were necessary, or it may be a reflection</p> <p>5 of how many disciplines were caught and followed up</p> <p>6 with, right?</p> <p>7 A. Yes.</p> <p>8 Q. Like we can't go back to 2016 and disaggregate that,</p> <p>9 can we?</p> <p>10 A. No.</p> <p>11 Q. And disaggregate this is what our number showed on the</p> <p>12 number of assaults and harassments and everything, was</p> <p>13 that really the number is just the number that was</p> <p>14 memorialized, right?</p> <p>15 A. Yes.</p> <p>16 Q. And that's why I just go back to I know you haven't</p> <p>17 heard the tapes, but when you get the tapes years</p> <p>18 later, and you find out that not one question is asked</p> <p>19 about well wasn't there anyone doing rounds. Did you</p> <p>20 see any officers in the area. You know, did you call</p> <p>21 out for the officers. Have you told the officers you</p> <p>22 were afraid of him. I mean, there seems like a really</p> <p>23 big gap there, doesn't it?</p> <p>24 A. Yeah. I would have preferred those things were done.</p> <p>25 Normally they're done.</p>	<p>1 Q. And trust me when I say I can barely remember like</p> <p>2 before Covid. It's all very foggy. So, I guess that</p> <p>3 I'm asking you things that go way back. Do you recall</p> <p>4 any – I imagine, and I don't need to know about staff</p> <p>5 that have been engaged with sexual misconduct with</p> <p>6 prisoners, so fraternization type disciplines. Putting</p> <p>7 those aside, do you recall any discipline of staff</p> <p>8 where there's been a finding of, you know, your lack of</p> <p>9 supervision contributed to this sexually unsafe</p> <p>10 situation for a prisoner?</p> <p>11 A. And I think, again, that sort of conclusion would come</p> <p>12 from reviewing an event. And it would be noted that</p> <p>13 something wasn't done, like rounds. And then we would</p> <p>14 bring that person in and figure out why that happened,</p> <p>15 or if it happened. And certainly discipline could be</p> <p>16 an offering for that.</p> <p>17 I'm trying to think back over all discipline.</p> <p>18 You know, often that's similar to suicide. That's</p> <p>19 reviewed. And we find that there is a deficiency, and</p> <p>20 we correct that. And it's similar here.</p> <p>21 I'm trying to think of a specific case, you</p> <p>22 know, that we've terminated folks who, you know, maybe</p> <p>23 had consensual relationships with prisoners. But I</p> <p>24 can't recall specific cases.</p> <p>25 Q. So my question had been you can't think of a case</p>
<p>1 Q. Can I ask it this way: I mean, the investigators are</p> <p>2 supposed to be very highly trained, right, to do this</p> <p>3 work, right?</p> <p>4 A. Yes.</p> <p>5 Q. Right. You're not expecting and relying on Joe Blow,</p> <p>6 who is in the jail from the street, to know what is</p> <p>7 relevant and important to run your jail and what</p> <p>8 questions should be asked, do you?</p> <p>9 A. No.</p> <p>10 Q. Did you have a staff in your PREA role in 2016 at all?</p> <p>11 A. No.</p> <p>12 Q. Do you recall what's the first thing you ever heard</p> <p>13 about the Burks and Solomon matter? Can you roll back</p> <p>14 in your memory and say like the first thing I remember</p> <p>15 is this?</p> <p>16 A. It's difficult to recall 2016. You know, I can – you</p> <p>17 know, I can recall I talked to the captain of internal</p> <p>18 affairs frequently with different hats, with discipline</p> <p>19 and with PREA, and I'm sure that came up at some point.</p> <p>20 I don't know what we said about it. I'm sure it was in</p> <p>21 a log that we get every day for report, summaries and</p> <p>22 that. I would be alerted. And then I would sometimes</p> <p>23 – sometimes I would call the commander and say yes</p> <p>24 we've already called IA. That would probably be what I</p> <p>25 would half recall, I guess.</p>	<p>1 relative to punishment, or discipline I should say, of</p> <p>2 a staff member relative to an element of, you know, you</p> <p>3 weren't supervising adequately?</p> <p>4 A. Other than them participating.</p> <p>5 Q. Do you know of anything in your awareness or that you</p> <p>6 plan to testify to that happened with respect to</p> <p>7 Mr. Burks or happened with respect to Mr. Solomon</p> <p>8 because it was unique to them individually as opposed</p> <p>9 to this is the way we do things, this is the policy,</p> <p>10 this is the practice we do?</p> <p>11 A. No.</p> <p>12 Q. How about – I mean, in other words, if they had been</p> <p>13 any other prisoners, is it your understanding and</p> <p>14 belief that anything that did or didn't happen would</p> <p>15 have been the same in terms of the way the staff</p> <p>16 reacted to them, the policies?</p> <p>17 A. It sounds like you're asking was there a deviancy based</p> <p>18 on who they are. And I don't have any knowledge of</p> <p>19 that.</p> <p>20 Q. Earlier when you testified – I asked you about when</p> <p>21 the 2016 pamphlet was issued, and you didn't know the</p> <p>22 date. Do you know it today?</p> <p>23 A. Let's see.</p> <p>24 Q. Are you looking at Exhibit 3?</p> <p>25 A. Is that what we called this?</p>

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<p>1 MR. O'NEILL: Yes.</p> <p>2 A. So, Exhibit 3, there is a memorandum from June 7, 2016.</p> <p>3 BY MS. PRESCOTT:</p> <p>4 Q. What does it say?</p> <p>5 A. That says that I have made a thousand pamphlets ready</p> <p>6 for you today. And of course here's the template from</p> <p>7 the PREA resource center.</p> <p>8 Q. So, if Mr. Burks was already in – so, these were to go</p> <p>9 in when people were done with intake, right, screening?</p> <p>10 A. Yes.</p> <p>11 Q. So, if Mr. Burks was already in prison, or jail –</p> <p>12 excuse me – was there any order that said go give this</p> <p>13 to everybody that was already here?</p> <p>14 A. No, there was not.</p> <p>15 Q. Do you think that he wouldn't have gotten the pamphlet?</p> <p>16 A. I don't know. Because if he went back for a re-housing</p> <p>17 assignment, it could have been given to him. And I</p> <p>18 incorporate these rules into the inmate handbook. And</p> <p>19 so, he would have had a handbook which would have</p> <p>20 mimicked sexual safety information.</p> <p>21 Q. Do you know when the updated handbook went out?</p> <p>22 A. I do not have that.</p> <p>23 Q. Do you know when the 2016 new signage went up in the</p> <p>24 old division?</p> <p>25 A. I think there is a – in that May 27 memorandum,</p>	<p>1 commander, they have over the staff.</p> <p>2 Q. And you also – and part and parcel of that is you're</p> <p>3 not working in the jail's facility, right?</p> <p>4 A. I'm not.</p> <p>5 Q. You're not seeing the day-to-day? I mean, you might</p> <p>6 pass through, there might be a meeting, but you're not</p> <p>7 there boots on the ground?</p> <p>8 A. No.</p> <p>9 Q. And that was true in 2016?</p> <p>10 A. Yes.</p> <p>11 Q. How long had it been since you had been on a routine</p> <p>12 basis, if not daily, then frequently during the week,</p> <p>13 in the jail divisions? How long had it been?</p> <p>14 A. Well, the last time I had a post in a jail was 2013.</p> <p>15 And then I retired.</p> <p>16 Q. So, your last post was something that was operationally</p> <p>17 in the jail?</p> <p>18 A. Yes.</p> <p>19 Q. Did you ever examine what other jails or prisons,</p> <p>20 federal, state, local facilities did in 2016 to manage</p> <p>21 dangerous and difficult inmates where they would be</p> <p>22 managed and held?</p> <p>23 A. Yes. And I did that with Chuck Pappas. He had a</p> <p>24 contact at the Michigan Department of Corrections and</p> <p>25 he sent us his PREA rule book to help us build the</p>
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<p>1 there's a reference to expected behavior. The inmate</p> <p>2 handbook is very clear. But that's not signage. I'm</p> <p>3 saying the handbook is clear on behavior. I'm assuming</p> <p>4 it was there in May, but maybe not. I thought I had a</p> <p>5 signage one. Even if we do find it, I don't see a</p> <p>6 date.</p> <p>7 Q. Well, the exhibit is marked and it's part of the</p> <p>8 record. So, if it's there, it's there. Suffice it to</p> <p>9 say, you don't have any information of your memory?</p> <p>10 A. Of the date that they were on?</p> <p>11 Q. Right.</p> <p>12 A. No, I don't.</p> <p>13 Q. You testified at your prior deposition that you did not</p> <p>14 have superintendent operational authority. What does</p> <p>15 that mean?</p> <p>16 A. That means I believe in my role as the director that I</p> <p>17 do not have the ability to order command officers to do</p> <p>18 that.</p> <p>19 Q. Okay. So, could it be a little bit like sort of like</p> <p>20 being in the chain of command in terms of operations,</p> <p>21 what you shall and shall not do? I'm just trying to</p> <p>22 understand genuinely.</p> <p>23 A. I'm trying to think that through. As a director, I</p> <p>24 don't have that line of command authority that I think</p> <p>25 you just mentioned. That a sergeant, lieutenant,</p>	<p>1 policy.</p> <p>2 Q. Okay. So, what's going on with Chuck at this time? Is</p> <p>3 he on his way out and he's handing off to you? Or</p> <p>4 you're working together?</p> <p>5 A. We're in such close quarters. We see each other, not</p> <p>6 on a daily basis or anything, but it seems like that</p> <p>7 too would have been in that handover process. And he</p> <p>8 gave me that resource to finish that policy.</p> <p>9 Q. Okay. So, he gave you MDOC's policy?</p> <p>10 A. Yes.</p> <p>11 Q. And do you remember seeing an MDOC policy, specific</p> <p>12 provisions that there shall be a determination of a</p> <p>13 potential victim and who is potentially an aggressor?</p> <p>14 Do you recall seeing that?</p> <p>15 A. I do not.</p> <p>16 Q. Do you recall seeing that MDOC rules and regulations,</p> <p>17 similar to PREA, say that you can't house those two,</p> <p>18 not only in the same cell, but even in the same pod?</p> <p>19 A. Yes.</p> <p>20 Q. And you understand that to be what PREA said had</p> <p>21 happened?</p> <p>22 A. Yes.</p> <p>23 Q. As of 2012?</p> <p>24 A. You know what, I don't have a memory of talking about</p> <p>25 that in 2012.</p>

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<p>1 Q. Okay. But do you know, sitting here today, that that 2 is one of the – that is something that was dictated by 3 the PREA standards that came out in 2012? 4 A. Yes. 5 Q. And I'm going to hand you what I'm going to mark as 6 Exhibit 4. It's the assessment sheet for all its 7 prisoners. 8 MS. PRESCOTT: You can look at it, Paul. I 9 only have that one copy. 10 MARKED FOR IDENTIFICATION: 11 DEPOSITION EXHIBIT 4 12 12:55 p.m. 13 BY MS. PRESCOTT: 14 Q. So, my only question is whether this is something that 15 you know, as you looked at PREA enforcement, like you 16 just testified you got the policy from MDOC, did you 17 get their little handy-dandy here is how to screen for 18 PREA risk in Exhibit 4? 19 A. No, I don't specifically recall this form. 20 Q. Have you ever seen any score sheet like that that is 21 specifically designed to get a factor of sexual 22 victimization or sexual aggressor from any facility 23 anywhere? 24 A. So, I see that this form is more than just a PREA form. 25 It's all different characteristics. So, it would be –</p>	Page 114	Page 116
<p>1 it would function in more than one way. This is 2 certainly augmenting a risk assessment to include 3 sexual aggression. 4 Q. So, are you aware that MDOC has a whole other screening 5 class level? You could have one. You could be a four, 6 and that means you are going to go to maximum security 7 facilities. 8 A. I don't know that sheet. 9 Q. So, let's go back to my question about Exhibit 4. Have 10 you seen a screening tool like what Exhibit 4 has used? 11 Prison Rape Elimination Act risk assessment, have you 12 seen that kind of a format? The wording might change 13 here or there from either the PREA resource center or 14 line or other facilities in the United States. 15 A. In 2016? 16 Q. Have you ever seen one sitting here today, all the way 17 until today? 18 A. Well, we talked about that with someone from New York 19 this week. 20 Q. Okay. How about ever before this week? 21 A. No. 22 Q. Do you know whether other counties in the area were 23 using screening tools like as in Exhibit 4? 24 A. We all have screening tools and we all ask questions 25 that related to victimization and predation. They're</p>	Page 115	Page 117

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<p>1 things in different ways. And we're going to see if 2 there's an aggressor, number one here, based on 3 criminal history and try to gather that same 4 information.</p> <p>5 Q. So, my question is whether you have seen score sheets 6 that differentiate, based on what you identified 7 someone said, this is how much of a weight should be 8 given based on these scores? Have you ever seen that 9 undertaken, given a score sheet, at any time in any 10 facility?</p> <p>11 A. Not that I can recall.</p> <p>12 Q. And are you aware that in the Wayne County jail in 13 2016, you cannot score higher or lower because of 14 anything to do with a sexual crime? You know, so you 15 either have an assaultive felony or you don't. There 16 is nothing that honed in on sexual victimization; are 17 you aware of that?</p> <p>18 A. I am not specifically aware of the instrument they used 19 in 2016.</p> <p>20 Q. Fair enough. Don't you think that would be important 21 to differentiate, okay, there is a lot of aggressive 22 people or violent people that are in the jail that have 23 never been sexually aggressive? Wouldn't it be 24 important to have a tool to sort that out?</p> <p>25 A. It would be important to know that information. You</p>	<p>1 A. I think we were concentrating on writing our policy and 2 I think we were comparing policy to policy, not jail 3 operation. So, I don't think we were at that level.</p> <p>4 Q. So, if you were comparing policy to policy, why not 5 institute, like MDOC, a clear role that says you shall 6 with a potential aggressor, with a potential victim.</p> <p>7 A. I think that's what we are already trying to do.</p> <p>8 Q. Well, how is that possible when Mr. Ramel testified 9 there isn't even a categorization of potential 10 aggressors and potential victims?</p> <p>11 A. More an emphasis on history you're saying that.</p> <p>12 Q. The history of 2013, '14, '15, '16 is what I'm focused 13 on.</p> <p>14 A. I'm sorry. I lost the question.</p> <p>15 Q. Fair enough. So, Mr. Ramel has said we don't identify. 16 We don't have a flag. We don't have a categorization. 17 So, how can you be managing according to category that 18 isn't even traced and tracked?</p> <p>19 A. Well, 14-17 says you take into account predation. And 20 it said it in 2009 and it said it in 2016. And those 21 were always considerations. Now, it might not look 22 like that, but that has always been in the policy.</p> <p>23 MARKED FOR IDENTIFICATION: 24 DEPOSITION EXHIBIT 6 25 1:06 p.m.</p>
<p>1 know, how you gather it is probably different ways.</p> <p>2 Q. Wouldn't it be important though to translate it into a 3 score so you could assess specifically the risk of 4 sexually victimizing somebody else as opposed to the 5 risk that you're just scary and violent in general?</p> <p>6 A. I think that would be helpful, yes.</p> <p>7 Q. Why wasn't it ever instituted all the way up until 8 today?</p> <p>9 A. You know, my thought is that we have a system and we 10 use that system and we're aware of sexual predation and 11 victimization. And we do try to protect inmates in 12 that way with the tool that we use. It may not look 13 like that. So, you know, is that something that we'll 14 look at when we move to the new system in a year, yes.</p> <p>15 Q. But you don't have an answer as to why not, in 2014 or 16 '15 or '13, after PREA came out and said to do this?</p> <p>17 A. My thought is that we said we do screen and we do 18 screen for those attributes, but it doesn't look like 19 that.</p> <p>20 Q. And you've told me everything you know about the 21 screening process, right?</p> <p>22 A. As far as I can determine, yes.</p> <p>23 Q. When Mr. Pappas and you got the policy, did you ask 24 what they use for screening tools? I know you said you 25 haven't seen them. Did you ask for those?</p>	<p>1 BY MS. PRESCOTT:</p> <p>2 Q. Exhibit 6 goes along with 4 and 5. So, it's Prison 3 Rape Elimination Act (PREA) risk assessments manual 4 from MDOC. And it's got a date, I think, August 12, 5 2015. Take a look at it. I mean, you can take as long 6 as you want. My question is whether you, first, have 7 seen this document before?</p> <p>8 A. I don't think I've seen this.</p> <p>9 Q. Do you know of anyone, yourself, or anyone from the 10 Wayne County sheriff's office, asking MDOC will you 11 give us your manual for how you do your sexual assaults 12 or your PREA screening?</p> <p>13 A. Not to my knowledge. We were asking for the general 14 policy examples that would be put out in '16. And this 15 looks like their prison management system that's unique 16 to them.</p> <p>17 Q. To this day, is there any manual that tells anyone in 18 classifications here is the PREA requirements for how 19 to do classification screening?</p> <p>20 A. Other than our policies, I'm not aware of one.</p> <p>21 Q. Was protective custody a place that had additional 22 layers of oversight or procedures for additional 23 oversight of the inmates?</p> <p>24 A. Protective custody to me is a broad term. So, there's 25 different types of housing. If you're referring to</p>

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<p>1 610's own protection specifically –</p> <p>2 Q. Let's focus on 610, yes. That ward, did it have</p> <p>3 special rules for additional oversight or protection?</p> <p>4 A. As far as I understand, there is a classification</p> <p>5 option for folks who cannot or they do not want to be</p> <p>6 in general population. It could be for a high profile.</p> <p>7 It could be for someone who just doesn't do well with a</p> <p>8 large group of people. It's not like a mental health</p> <p>9 ward that requires direct observation or 30-minute</p> <p>10 rounds, that I'm aware of.</p> <p>11 Q. So, remember we reviewed the policy and how the policy</p> <p>12 talked about continuous rounds of individuals two and</p> <p>13 higher; you're not aware of that?</p> <p>14 A. Say that again.</p> <p>15 Q. Do you recall that policy in 2016 actually provided</p> <p>16 that there would be continuous rounds for individuals</p> <p>17 not in medical, but continuous rounds relative to</p> <p>18 individuals that were at a classification of two or</p> <p>19 higher?</p> <p>20 A. So, I'm aware that there is a policy for one of the</p> <p>21 divisions that was written with the words continuous</p> <p>22 rounds. But I think I said last time in January, and I</p> <p>23 think I said earlier today, that the idea that it takes</p> <p>24 an hour to do a round, you're continuously on a round.</p> <p>25 Continuous rounds, it means different things, I think,</p>	<p>1 A. Well, cameras aren't – those were a prophylactic sort</p> <p>2 of thing that we did additionally in that building to</p> <p>3 try to increase coverage. So, it wasn't tied to a type</p> <p>4 of inmate. It was a building sort of installation.</p> <p>5 Q. Is protective custody just another housing unit? Is it</p> <p>6 treated as just another housing unit?</p> <p>7 A. And then again it would be – do you mean special</p> <p>8 custody?</p> <p>9 Q. I'm talking about ward 610, that level of whatever. I</p> <p>10 know there's other kinds of special arrangements. But</p> <p>11 ward 610, regular protective custody, isn't it the case</p> <p>12 that protective custody is just a different name for</p> <p>13 the same thing? It's just another housing unit?</p> <p>14 A. You might think that, but the reason it's not is</p> <p>15 because it limits the amount of people. It's a small</p> <p>16 ward. There's only three, four cells. It reduces the</p> <p>17 amount of people that you're around.</p> <p>18 Q. It reduces the number of people and increases the</p> <p>19 exposure to any one of them, right?</p> <p>20 A. I don't know that I agree with that.</p> <p>21 Q. Okay. I think we'll just move on from there.</p> <p>22 Are you aware of anything else that</p> <p>23 differentiates ward 610, that level of protective</p> <p>24 custody, from general population, other than there's</p> <p>25 fewer people?</p>
<p>1 to different people. And so, if the question is am I</p> <p>2 aware of it, yes.</p> <p>3 Q. But you think it means that you can sit at the desk for</p> <p>4 45 minutes of the hour and not be on your feet moving</p> <p>5 between people?</p> <p>6 A. It doesn't mean that. Because you have two people that</p> <p>7 work there. So, someone is walking and someone is at</p> <p>8 the desk to provide you security there.</p> <p>9 Q. Okay. And is that your understanding of how things</p> <p>10 worked on 610 in the week up to and including the rape?</p> <p>11 A. I don't know the answer to that because I wasn't, you</p> <p>12 know, administering that facility.</p> <p>13 Q. Fair enough. Okay. So, would you agree that there's</p> <p>14 no more rounds in protective custody than not</p> <p>15 protective custody, more frequently or –</p> <p>16 A. I think the answer could be yes, depending on who's in</p> <p>17 there and what's in there, what the intention was. If</p> <p>18 it's just because I'm not comfortable around people,</p> <p>19 then perhaps the standard doesn't change. It goes back</p> <p>20 to what does unprotected mean. What does special</p> <p>21 housing mean. You know, what do those mean.</p> <p>22 Q. Okay. So, it could be, but it's not baked into the</p> <p>23 cake or inherent that in protective custody we have</p> <p>24 more rounds or more oversight or more cameras and so</p> <p>25 on?</p>	<p>1 A. Well, there are other things that we would do depending</p> <p>2 on who we house there. So, if it was someone who</p> <p>3 wanted to shower independently, then they would be</p> <p>4 pulled one at a time to shower. So, there are other</p> <p>5 things that could happen in that ward.</p> <p>6 Q. Can straight people go to alternative lifestyle? Can</p> <p>7 they go to the alternative lifestyles area because they</p> <p>8 don't want to be around people who might be sexual</p> <p>9 offenders?</p> <p>10 A. My opinion is in general, no. But, again, people would</p> <p>11 call that a special – they might call that a special</p> <p>12 custody ward. Because as you're screening people and</p> <p>13 someone says look, I'm a transgender person, and you</p> <p>14 talk to that person, and you send them to medical and</p> <p>15 they say I consider myself male or female. How do you</p> <p>16 identify. Where would you feel comfortable. So, it</p> <p>17 all happens at the intake.</p> <p>18 Q. Yeah. I'm saying can someone say yeah I'm straight and</p> <p>19 I'm not trans, but I don't want to be around people</p> <p>20 that are potentially sex offenders? Can you opt into</p> <p>21 the alternative in the hopes that that might be a</p> <p>22 better place?</p> <p>23 A. Again, it would be a totality of what's presented to</p> <p>24 you. I want to go somewhere is never a reason that we</p> <p>25 send you. You might feel safe there, but we might say</p>

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<p>1 you might feel safe there, but we're not confident that 2 the other people are safe with you there. 3 Q. Right. 4 A. So, we might not make that decision. 5 Q. Okay. And it's certainly not just an option where you 6 can select oh, I'm in jail, I want to get my menu out 7 and I would like to check that I'm in the alternative 8 life? It's not the prisoner's option? 9 A. It could start with the prisoner requesting. But then 10 we have to do some research and discussion and 11 determine what the needs really are based on our 12 expertise as keeping people safe and what they are 13 requesting. We don't dismiss it. 14 Q. I got it. It's just that it's not – in and of itself, 15 it's not enough? 16 A. Uh-un. 17 Q. That's a no? 18 A. No, it's not in and of itself. 19 Q. I see you wrote a memo about trans inmates and this 20 alternative lifestyle area. Did you understand that to 21 be something that was just dictated by federal law, 22 that you needed to provide a safe area for people who 23 do qualify? 24 A. No. I understand that we have to provide options for 25 people as they present themselves. A transgender</p>	Page 126	Page 128
<p>1 person might not be comfortable on a special housing. 2 They say I identify as male, and that's how I would 3 like to be housed. Well, we'll look for options in 4 that regard. 5 Q. So, it is required that there be segregation of people 6 who are potentially transgender so that they're not 7 held with the gender they don't identify with? 8 A. Yes. We have to look out for everyone's interest as 9 they enter. 10 Q. Certainly the department understood, in 2016, someone 11 can be at risk of being sexually violated if they are 12 straight and they do not ask for an alternative 13 lifestyle? 14 A. Correct. 15 Q. Were you aware, in 2016, that MDOC had been separating 16 potential victims and aggressors for years by then when 17 you sit down with Mr. Pappas and go through the policy? 18 A. I think our awareness is that we were always looking 19 out for aggressors and victimization in our intake, 20 including sexual aggression victimization. 21 Q. Okay. Do you understand that MDOC had instituted 22 policies specifically rating people on the – you 23 understood PREA brought in specific factors you were 24 required to assess, right? 25 A. Correct.</p>	Page 127	Page 129

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<p>1 that document before.</p> <p>2 A. Is this something new or something old?</p> <p>3 Q. Is this something that you prepared, that you've seen</p> <p>4 before?</p> <p>5 A. I guess, I'm not sure what date it's from.</p> <p>6 Q. It got to me on September 7th. And it's signed by</p> <p>7 Mr. O'Neill.</p> <p>8 A. I know I looked at something similar to this before</p> <p>9 today, just a couple days ago, right.</p> <p>10 Q. Okay. So, you've seen it. Do you know if you saw it</p> <p>11 before September 7th?</p> <p>12 A. I don't know.</p> <p>13 MR. O'NEILL: Can we take a break when we get</p> <p>14 to a good breaking point.</p> <p>15 MS. PRESCOTT: Just let me ask a few more</p> <p>16 questions.</p> <p>17 BY MS. PRESCOTT:</p> <p>18 Q. This isn't a list that you wrote out?</p> <p>19 A. No.</p> <p>20 Q. Here in B it says that this is a summary of facts and</p> <p>21 opinions Director Davis is expected to testify about.</p> <p>22 And then there's a set of factors. A, from the prior</p> <p>23 page, says Director Davis is expected to present</p> <p>24 evidence under these rules regarding the fact that</p> <p>25 Wayne County jail took measures to address the risk of</p>	<p>Page 130</p> <p>1 Things that you witnessed, things that you observed, or</p> <p>2 things that, you know, add up to, you know, we did the</p> <p>3 right thing with him.</p> <p>4 A. My opinion is that we did the right thing and we always</p> <p>5 do the right thing for the inmates that we house. I</p> <p>6 can certainly – I can witness that we have an intake</p> <p>7 system. That we have medical. That we have</p> <p>8 classification. That we have housing officers that do</p> <p>9 rounds. That we protect our inmates. We rehouse them</p> <p>10 when necessary. That we advise them on the zero</p> <p>11 tolerance by signage and education, pamphlets. And</p> <p>12 that we protect them by responding and investigating</p> <p>13 and mitigating and providing services for victims. All</p> <p>14 the things that we've been talking about.</p> <p>15 Q. Anything else?</p> <p>16 A. I think intentional creation of our policies that we've</p> <p>17 already talked about. Using the PREA resource for</p> <p>18 training and all the training that we've done for</p> <p>19 everyone in the facility.</p> <p>20 MS. PRESCOTT: All right. Do you want to</p> <p>21 take that break?</p> <p>22 MR. O'NEILL: Sure. Thanks.</p> <p>23 (Recess taken at 1:33 p.m.)</p> <p>24 (Back on the record at 1:38 p.m.)</p> <p>25 BY MS. PRESCOTT:</p>
<p>1 sexual assault in the jails, and thus, the defendants</p> <p>2 did not act with deliberate indifference as to whether</p> <p>3 plaintiff was subject to an assault in the jail on</p> <p>4 August 24th, 2016. Do you know how B relates to A?</p> <p>5 So, this list of B, does it go with the point in A? Or</p> <p>6 do you know, one way or another?</p> <p>7 A. I guess I don't have an opinion on that.</p> <p>8 Q. Okay. Do you know what – do you have a conception in</p> <p>9 your mind, or a view in your own words, of what it is,</p> <p>10 what amounts to deliberate indifference versus what is</p> <p>11 on the other side of that line?</p> <p>12 A. I don't think I could express an opinion on a legal</p> <p>13 concept like that.</p> <p>14 Q. Okay. Do you have a sense of what steps could be in</p> <p>15 this document, could not be in this document, that</p> <p>16 Wayne County took that show it met its duties or its</p> <p>17 responsibilities to Mr. Burks in the months, years,</p> <p>18 days, leading up to his rape?</p> <p>19 A. I mean, can I think of anything that hasn't been turned</p> <p>20 in prior to 2016, is that what you're asking? I don't</p> <p>21 know what you're asking.</p> <p>22 Q. I guess what I'm asking is there's – you know, we have</p> <p>23 – I'm asking you about any facts that you would bring</p> <p>24 to the table and say okay, this is what, in my view,</p> <p>25 shows that we were doing the right thing by Mr. Burks.</p>	<p>Page 131</p> <p>1 Q. Do you know anything about any medical review of</p> <p>2 anything to do with Solomon or Burks at any time?</p> <p>3 A. I think I gathered from the reports they had medical</p> <p>4 treatment after the attack.</p> <p>5 Q. How about anything from before the attack?</p> <p>6 A. Other than normal screening, I am not aware.</p> <p>7 Q. You're really not aware of the normal screening. You</p> <p>8 just have to know that everybody has to go through the</p> <p>9 quarantine period and go to medical, right?</p> <p>10 A. Yes.</p> <p>11 Q. So, what might have been done with Solomon, or meds, or</p> <p>12 what his conditions were, you don't know?</p> <p>13 A. I do not.</p> <p>14 Q. So, you don't know whether he was a person who was,</p> <p>15 because of medical conditions, a potentially eminent</p> <p>16 danger to Mr. Burks?</p> <p>17 A. I'm not aware of that.</p> <p>18 Q. And have you testified about everything you know about</p> <p>19 the housing of Mr. Solomon and Mr. Burks, the specifics</p> <p>20 of who and what put them together, and what was the</p> <p>21 decision making there? I think you said you really</p> <p>22 don't know about that, right?</p> <p>23 A. That's correct.</p> <p>24 Q. You said that one of the things that's done, in</p> <p>25 general, is to re-house individuals, when necessary,</p>

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<p>1 when there's fear or, you know, known enemies or 2 threats or those kind of things, right? 3 A. Right. 4 Q. But you don't know whether those policies were carried 5 out with regard to Burks or Solomon, correct? 6 A. I do not. 7 Q. Do you know whether Mr. Williams, Keith Williams, or 8 Ms. Bell had any training specific to PREA standards 9 before August 24th, 2016? 10 A. The answer is I know it was directed to happen. I 11 don't know when it happened. Unless it's in the 12 previous paperwork where we did find some signature 13 sheets, I don't recall at this moment. 14 Q. You used a word, it was either all or always, in most 15 of your recent – you know, we always protect all of 16 the prisoners. And those are – you know, I'm trying 17 to recall exactly the wording and I won't be perfect at 18 it. But is it your testimony here today that Wayne 19 County jail has always protected all the prisoners that 20 have come through its doors? 21 A. I was trying to – it might be hyperbole, but I'm 22 suggesting that that's our business, to keep people 23 safe. And that's what we do every day. 24 Q. Okay. So, I guess what I'm taking, in part, is your 25 point – I guess that – well, strike that.</p>	<p>1 whether policy was followed in the, you know, months 2 leading up to the rape, in terms of operational reviews 3 and keeping people trained, keeping people staffed 4 appropriately, and whatnot? 5 A. Yes. 6 Q. Okay. Is there any factor, any item, assertion, in 7 either of the reports that you know of, that wasn't 8 accurate? So, the characterization of policy and 9 whether it's sufficient or not, it's on the record. 10 A. My impression was it was very lengthy, and I would have 11 to go over it again. 12 Q. Who do you think -- there have been times today where 13 you said look, I know what the policy is supposed to 14 be. I don't know how it was implemented. Who is 15 ultimately responsible for that question whether, on 16 610, on August 24, 2016, and the weeks and months 17 leading up to it, that would set the conditions that 18 would apply that we were following policy? What is 19 that person's name? 20 A. I guess that would be the commander of the facility who 21 would have control over scheduling and duties and 22 assignments. And they would have ultimate -- they 23 would have the authority that I wouldn't have to look 24 at all of those questions. 25 Q. Do you know whether the commanders, could they move</p>
<p>1 So, your point is that the goal is to keep 2 people safe, the effort is to keep people safe, not 3 necessarily that they are always safe? 4 A. Our goal is to keep everyone safe to the best of our 5 knowledge and experience and do our best to predict 6 dangerousness through the classification process. 7 Q. Did you read the report -- you said that a couple of 8 the things that you looked at ahead of today were some 9 reports of some experts that we hired. Did I interpret 10 that correctly? 11 A. That's correct. 12 Q. Was there anything in the reports that you thought was 13 incorrect? 14 A. I think that the PREA representative was incorrect in 15 her general assertion that we don't have any policy and 16 we don't do anything, which was my impression of what 17 she wrote. And I think the jail expert's opinion 18 saying that yes, I do have policy, but I didn't follow 19 it is incorrect. From what I know, we followed our 20 policy. 21 Q. Have we covered everything that you know about the 22 following or not following of policy as to Burks, 23 Solomon, and the rape? 24 A. Yes. 25 Q. And have we covered everything that you know about</p>	<p>1 between jails from time to time, or someone could be 2 promoted and moved or whatever it may be, whether they 3 come in and take a look at the recent history of any 4 sexual assault or sexual harassment allegations that 5 have been occurring here? 6 A. Not that I'm aware of. 7 Q. Do you see how that could be helpful in understanding 8 operationally what issues may be ongoing? 9 A. In general that practice would be good. Not just for 10 this idea, but for operations in general. Maybe they 11 do. I don't know. 12 Q. When they come in, they review other things, right, 13 where are we on staffing, on overtime? 14 A. Correct. 15 Q. They come in and they look at where are we on 16 headcount, correct? 17 A. Right. 18 Q. So, it's not like the idea of coming in and looking at 19 okay, where have we been, where are we heading. That's 20 not something out of the ordinary. It's just that they 21 haven't done it in these particular ways that you 22 described, right? 23 A. They could. I tracked results when I was commander. 24 But I don't know what their practice is. 25 Q. With a PREA lens or the review of what PREA required,</p>

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<p>1 would it be appropriate to house someone who was a risk 2 of being a serious harm to a bunkie in a situation 3 where they are together mingling all day, like in ward 4 610? 5 A. I would only say change that to say known risk. 6 Q. A known risk? 7 A. Yeah. 8 Q. Then the answer would be it would not be appropriate, 9 correct? 10 A. It is. I mean, in general, it's appropriate to not 11 house someone who is a known risk with someone that's a 12 potential victim. So, sometimes those people would be 13 housed alone. But it's hard to speculate. 14 Q. Is it an expectation of an officer that if someone is 15 waving them over, calling for them like in the night, 16 that they should assess what is going on? Is this 17 real. Is there something they need. Would that be an 18 expectation? 19 A. Yes. 20 Q. Were you aware that Burks was waving a kite and calling 21 for help while he's just been raped overnight and the 22 officer ignores him and doesn't help, doesn't render 23 assistance? 24 A. I was not aware of that. But I became aware, somehow 25 in the deposition process, that there was a claim of</p>	<p>1 MR. O'NEILL: I don't need a break. 2 MS. PRESCOTT: I can pass the witness. 3 MR. O'NEILL: And no questions. Thank you. 4 (The expert deposition was concluded at 5 1:52 p.m. Signature of the witness was not 6 requested by counsel for the respective parties 7 hereto.) 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p>1 that. If it's true or not, I do not know. 2 Q. So, that claim has been made by him under oath in a 3 court of law and in a federal lawsuit. So, the under 4 oath part was, I don't know, 2017. All the way up to 5 the lawsuit is filed in 2019. Do you know of anyone 6 that ever went back, given those pieces of information, 7 and said you're still supervising people, let's ask you 8 about this. Let's find out what your take is on that. 9 Did anyone do that right up until I called him in and 10 subpoenaed him? 11 A. I wouldn't have any direct knowledge if that occurred 12 or if someone responded. But my experience is that's 13 what we do. Of course we would respond because on 14 midnights you can hear -- it's quiet and you can hear 15 someone asking for assistance. Of course we would 16 respond. 17 Q. It would not be appropriate to allow a person to go 18 overnight before they could get help that they were 19 asking for? 20 A. We would help them immediately once we were informed. 21 Q. So, did you say no, that we would help them 22 immediately? 23 A. Once we were informed, yes. 24 MS. PRESCOTT: I think that I'm done. If you 25 want to take a break.</p>	<p>1 CERTIFICATE OF REPORTER 2 STATE OF MICHIGAN) 3) SS 4 COUNTY OF MACOMB) 5 6 I, LAURA AMBRO, certify that this deposition 7 was taken before me on the date hereinbefore set forth; 8 that the foregoing questions and answers were recorded 9 by me stenographically and reduced to computer 10 transcription; that this is a true, full and correct 11 transcript of my stenographic notes so taken; and that 12 I am not related to, nor of counsel to, either party 13 nor interested in the event of this cause. 14 15 16 17 18 19 20 21 22 LAURA AMBRO, CSR-5882 23 Notary Public, 24 Macomb County, Michigan. 25 My Commission expires: July 5, 2026</p>